AMERICAN BAR ASSOCIATION
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Washington Letter

Law Library of Congress

"There should be one law library in this country at least where the lawyer, the legal scholar, and even the ordinary citizen might find every book on the subject of law that has ever been printed. The goal of the national Law Library should be no less than that, and it should be a matter of pride for the Nation to have such a law library." This is the sentiment of perhaps ninety-five per cent of the American lawyers who have given the subject any thought. The words quoted are those of Charles M. Hay, of the St. Louis bar and an active member of the American Bar Association.

Largely as a result of the American Bar Association's interest in the project, there was organized, in 1934, the *Friends of the Law Library of Congress*, the purposes of which are primarily to stimulate interest in that law library. It is the hope of American lawyers generally and others interested in the law, that the law library at the Capitol will become the Nation's principal repository of legal sources and center of juridical research. Judge Alfred K. Nippert, of the Cincinnati bar, president of the *Friends of the Law Library*, has explained the work which the Society is doing in informing the legal profession of the needs of the Law Library and in urging the members to acquire the habit of thinking of the development of that Law library as their special undertaking. He states that numerous gifts of individual legal volumes have been obtained and that the organization is sanguine that in the near future gifts of money also may be received.

Many other interesting points are set forth in a pamphlet, recently released, quoting portions of the annual report of the Law Librarian, John T. Vance. Mr. Vance is an active member of the ABA and is the new chairman of the Section of Comparative and International Law. A considerable part of the pamphlet is devoted to historical and foreign acquisitions, including rare first editions of early English treaties and a very rare *incunabulum* from Germany. There is, for example, the 1646 edition of *Tithes too hot to be touched*, by Sir Henry Spelman, which was edited by his literary coadjutor, Jeremiah Stephens. But, perhaps by way of alleviation, there is William Sheppard's 1657 edition of *England's Balme: or, proposals by way of grievance and remedy; humbly presented to His Highness and the Parliament; towards the regulation of the law, and better administration of justice. Tending to the great ease and benefit of the good people of the nation.*

One of the more modern gifts was that of Mrs. Clarence Darrow, of Chicago. It consists of sixteen copies of the writings of her husband, the famous criminal lawyer, and his photograph.

As to legal manuscripts, there is the gift of Morris Hirshman, president of the Central Book Company, of New York City, consisting of old English leases, conveyances, and wills of the eighteenth and nineteenth centuries.

President Lashly Addresses D. C. Bar

The first address to a local bar association by Jacob M. Lashly, of St. Louis, following his election as President of the American Bar Association, was made to the Bar Association of the District of Columbia at its opening fall meeting at the Mayflower Hotel on September 18. There was an excellent attendance, 200 or more being present. President Lashly stressed the obligation of lawers to fight for legislation for the general welfare and not for special interests. He explained how, in these times the rights of property may be as vital as freedom of speech and of assembly. He defined justice as "liberty in action and a spiritual property that has nothing to do with the distribution of wealth." It is the responsibility of the bar, he said, to see that the Government's regulation of the use of property is made with justice and regularity; and he added that such justice "is the very spiritual essence of the Bill of Rights and is coequal with freedom of speech and assembly."

F. B. I. Trains for Law Enforcement

The four hundred seventy-eight graduates of the F. B. I. National Police Academy are given an opportunity each year for advanced study of a highly specialized nature designed to keep them abreast of the rapid progress being made in the science of law enforcement. This year's schedule calls for the holding of the retraining session the first week in October. At this time special emphasis is placed on national defense matters. The program deals almost entirely with courses in the investigative and technical aspects of espionage, sabotage, and internal security. No one is permitted to be present during the class meetings except the graduates. This is because of the extremely confidential nature of the subject matters to be discussed.

Inter-American Bar Association Progress

The officers of the Inter-American Bar Association recently joined with the executive council of the Federal Bar Association in holding a luncheon at the Army and Navy Club with Mr. Jacob M. Lashly, newly elected president of the American Bar Association, as the guest of honor. Mr. Lashly expressed the belief that this union of legal associations in the Western Hemisphere would prove of considerable benefit. He praised those who have been active in organizing the Inter-American group for their tenacity in working for its formation.

Mr. William R. Vallance, toastmaster at the luncheon, said that up to this time the constitution of the Inter-American Bar Association had been ratified by the associations of Cuba, Haiti, Mexico, Costa Rica, Puerto Rico and several groups in the United States. The Argentine Bar Association was expected to sign through its representatives who would be in Washington September 30th. The recent affiliation of the Federal Bar Association was announced by its President, Mr. Heber H. Rice. Brief speeches were made by a number

of other guests, including: Dr. L. S. Rowe, director general of the Pan-American Union; Thurman Arnold, Assistant Attorney General; and Rear Admiral W. B. Woodson, Judge Advocate General of the Navy.

Taxes—in Retrospect

With the detail of future taxes too uncertain at this time to justify factual discussion, it is interesting to turn to a recent study released by the Bureau of Internal Revenue of tax collections for the two recently past fiscal years. The per cent of the total internal revenue payments made by the states paying the most tax and then by those paying the least tax is worth a glance. It should be kept in mind, however, as the Bureau is careful to explain that receipts in the various states do not indicate the tax burden of the respective states, since the taxes may be eventually borne by persons in other states. There probably is no way of showing, in any fairly accurate way, to what extent this is true.

The seven states from which the largest total internal revenue payments were received for the year ended June 30, 1940, with the percentage of that total paid by each is as follows: New York, 19.72; Pennsylvania, 8.71; Illinos, 8.00; North Carolina, 6.17; California, 5.90; Ohio, 5.73; and Michigan, 5.38. There was some variation in the similar list for income tax payments, that is, leaving out of account other forms of internal revenue. The seven highest income-tax-paying states, with their percentages of the total, were: New York, 25.09; Illinois, 8.60; Pennsylvania, 8.22; California, 6.23; Michigan, 6.01; Ohio, 5.83; and New Jersey, 4.05.

The states paying the least of the total internal revenue collections, with their percentages of that total were these: North Dakota, .03; South Dakota, .04; Wyoming, .06; and vying for fourth place in this order, each with a percentage of .08, were: Idaho, Nevada, New Mexico, and Vermont.

Committee on National Defense

Washington Headquarters Organized

THE American Bar Association announces that pursuant to a resolution unanimously adopted at its 63rd Annual Meeting held in Philadelphia on September 12th it has set up the Committee on National Defense which was created at that meeting. Arrangements have been made for Committee headquarters and a staff in the Hill Building, 839 17th Street, N. W., Washington, D. C.

The Association's purpose is to make fully effective in the public service and for the national defense the skill and resources of the Organized Bar as the most efficient means of coordinating and reinforcing the services which individual lawyers will perform as patriotic citizens.

The profession of the Law is the one which more than any other combines with broad experience in practical affairs a special education in the nature and workings of free institutions. Members of the profession are expected to carry responsibilities commensurate with their exceptional training and public trust, and when an emergency arises the Bar responds in an organized way in order that the public work of its members may be most useful and effective.

At the request of the Honorable Jacob M. Lashly, President of the Association, the War and Navy Departments and the Department of Justice have designated representatives to cooperate with the Association and its Committee on National Defense. These representatives are Lt. Col. Archibald King, U. S. Army; Lt. Col. John P. Dinsmore, U. S. Army; Commander John D. Murphy, U. S. Navy; Capt. Elbert M. Barron, O.R.C. (G.S.) (J. A. G. D.); Lawrence M. C. Smith, Esq., Special Assistant to the Attorney General. It is anticipated that the Advisory Defense Commission will also designate a representative.

President Lashly has appointed Edmund Ruffin Beckwith, of the New York Bar, as Chairman of the Committee. There will be nine other members whose names will be announced before the end of the week. Each of them will come from a different Federal Circuit and the committee will be broadly representative of the whole country.

From the outset the committee will be charged with certain duties relating to the accomplishment of the draft, the study of legislation affecting defense, and the public morale. In each of these fields it will assemble information and make it available to state and local bar associations throughout the country.

The first general duty of the committee relates to the provision of competent and reputable lawyers to serve with local draft boards, appeal boards, advisory boards for registrants, and in the offices of Government Appeal Agents. Lawyers who volunteer for this work, all of which will be done without pay, will reflect the responsibility of the Bar as both a professional and a public organization. For these purposes the committee will make available to state and local bar associations the technical information which it will assemble with regard to the operation of the conscription law and the various boards referred to.

The second duty relates to the personal legal problems of those draftees who may be without means to pay fees for the legal services which they may require. There will be cases involving leases or installment contracts, or employment and social security problems, where legal aid will be required. In this field the numerous Legal Aid Societies will be actively at work and the committee will undertake to supplement their resources wherever necessary.

The third duty relates to the provision of speakers and authentic writings for the information of the public on such subjects as the operation of the draft, the intricacies of manufacture and transport of defense materials, and the procedures of military justice. The Junior Bar Conference of the American Bar Association has set up a public information program and the Committee will assist the Conference in this work.

The fourth duty of the committee relates to legislation, Federal and State, for the benefit of the defense program and the general protection of the public. Legislation is needed for the prevention of sabotage and every kind of interference with essential services such as water supply and transport as well as for the protection of manufacturing plants, shipping, and other facilities. In some respects the laws now on the books are not entirely adequate for these purposes. The committee will study this situation and will offer its services to the Commissioners on Uniform State Laws, the Joint Conference Committee of the recent Federal-State Law Enforcement Conference, and other groups with regard to drafting measures which may be considered by state legislatures and municipal assemblies or by the Congress, and with regard to enlisting public support for the passage of proper legislation.

Hawaii Bar Association Lectures by Visiting Lawyers

THE members of the Bar Association of Hawaii, who hold all of their meetings at Honolulu, Territory of Hawaii, are interested in arranging for lectures or addresses by specialists in the different branches of the law, who may visit the Hawaiian Islands from time to time. The services of the lecturer will be adequately paid for by the Bar Association of Hawaii and arrangements can be made by addressing J. Donovan Flint, Secretary of the Association at Honolulu.

BENJAMIN L. MARX,
State Delegate, Hawaii.

PHILADELPHIA MEETING

The Journal and the Convention

THE JOURNAL, as in the past, will endeavor to "cover" the Convention and do it factually. Two main purposes will be kept in mind. *First* the doings of the Convention will be presented in an interesting and readable fashion, for the large number of our members who were unable to attend. A narrative account of the entire proceedings of the Assembly—unusually interesting this year—has been carefully prepared by one of the Board of Editors, at the expense of considerable time and effort. We are impelled to say to our members: "Read it, it is worth reading." A similar narrative account of the proceedings of the House of Delegates will appear in the November issue. Sheer pressure of time dictates such postponement. That account too will be worth reading.

The *Second* purpose of the JOURNAL is to preserve the record of the Convention for future use, and particularly to record the interesting and valuable papers and addresses which were given at the meeting.

The JOURNAL will also endeavor, by means of our candid camera, to show the interesting personalities and something of the "life" of the Convention. A mere narrative of words, however good, could not give a "picture" of the Convention; we believe our readers will welcome the "illustrations."

The October issue and November issue will both be largely devoted to the annual meeting. There is far too much material to be presented in a single issue. Indeed two issues can only summarize the extensive and very interesting material presented, in one way or another, at the Convention. It must be understood that the two issues of the JOURNAL are to be taken as a unit, in reporting the Convention; and that no priority, or the reverse, is indicated by the particular issue in which any subject matter appears. Over and above the proceedings as reported in the JOURNAL, members are urged to read the Annual Report, when it is received; it will have much material which cannot be given in the JOURNAL. If a word to the wise is sufficient, it is that our members generally neglect (to their cost) to give sufficient attention to the Annual Reports. The Reports of prior years become a rich mine for the lawyer interested in the deeper currents and tides of the law.

Finally, if any member desires any particular information about any special topic, or special features of the Convention, the JOURNAL will be glad to answer inquiries, so far as that is practicable.

First Session

THE keynote of the whole meeting quickly found voice, as members of the Association met in their first session in the Academy of Music. The welcoming addresses were in a vigorous and patriotic vein, and the formal response for the Association echoed the determination of the lawyers to do their part in the battle for liberty. President Beardsley's annual address was an earnest plea for self-preparedness, on the part of lawyers and Bar Associations. The memorial exercises paid tribute to the passing of valiant and useful members of the organized Bar. The "Open Forum" of the Assembly indicated itself to be a real and effective part of this annual meeting. The business of the first session of the Assembly was transacted with dispatch.

Welcome by the Philadelphia Bar

"THANK God, the soul of America is love of liberty, independence, and constitutional government. You have come to the soul of America." With these ringing words, Chancellor Joseph P. Gaffney of the Philadelphia Bar Association, (and member of the House of Delegates of the ABA) struck the key-note of his cordial welcome to the sixty-third annual meeting of the American Bar Association. President Charles A. Beardsley of California had called the meeting to order promptly at 10 o'clock, and introduced Chancellor Gaffney to speak for "our generous host, the Philadelphia Bar Association."

Chancellor Gaffney gave no merely formalized greeting in behalf of the lawyers of the host City and State. Instead, he put into vigorous words a spirit which appropriately pervaded the annual meeting at all stages. His address was as follows:

Chancellor Gaffney

"Mr. President, Mr. Mayor, Ladies and members of the American Bar Association:

You have come to the soul of America. As in man, so in the state, the soul is an animating principle distinct from the body; it is the spiritual side of man's and a nation's existence. Thank God, the soul of America is love of liberty, independence and constitutional government. It was in Philadelphia that that soul, at the first instant of its existence, was infused into the body and a great nation was born. Here Thomas Jefferson traced, upon enduring parchment, these reflections of that soul 'all men are created equal, they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Goverments are instituted among Men, deriving their just powers from the consent of the governed.' With these reflections burned deep into their individual souls, the men of '76 gave battle. Tyranny was vanquished. Liberty and independence triumphed. A brief period of confusion and drifting, then a demand for 'a more perfect Union' and the converging upon Philadelphia of patriotic, able and courageous men. They were the deputies appointed by twelve of the thirteen states to attend a Constitutional Convention. In Independence Hall, they met, debated and deliberated from May until September, 1787. On September 17th, they completed their task, insuring the 'Blessings of Liberty' to the people of the United States by giving to them a National Constitution and by transmitting to the Ages a monumental work designed, as John Marshall said, 'to approach immortality as nearly as human institutions can approach it.'

Your predecessors, the Bar of America, were in the

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JOSEPH P. GAFFNEY,
Chancellor, Philadelphia Bar Association

vanguard of the forces striving for liberty, independence and constitutional government. Many of them served with distinction in the First and Second Continental Congresses. Of the fifty-six signers of the Declaration of Independence, twenty-six were members of the Bar in their respective Colonies. Thirty-four of the fifty-five delegates attending the Constitutional Convention were lawyers or men who had studied law. It is most fitting, therefore, that their successors, the members of the American Bar Association should come to the place where, 153 years ago, liberty and constitutional government were enshrined. Come, too, for the holding of their deliberations, at the time when lights of liberty and independence are going out all over Europe.

Your host, the Philadelphia Bar Association, bids you welcome. Among the founders of our Association were patriots of 1776 and 1787. Though inaudible, their spirit also speaks to you, mingling with their greetings a plea that, at every historic shrine from Independence Hall to Valley Forge, you re-dedicate yourselves to the preservation of our democratic institutions, and pray God that liberty and constitutional government shall not perish from the earth."

Mayor Lamberton Greets the Bar

Mayor Robert Lamberton, a member of the ABA and a well-known lawyer who has been, successively, a member of the Philadelphia Common Council, Sheriff, Judge of the Court of Common Pleas, and Mayor of the City of Philadelphia, gave the official greeting for the City. Mayor Lamberton said in part:

> I had thought that in his discussion Mr. Gaffney would name to you some of the legal giants who have practiced at our Bar in the past, for Philadelphia is proud of the lawyers we have had, and when we review the great names of the past, and then come down to the present, I believe we have legal giants in Philadelphia today, and the Chancellor of our Association is by no means the least of these.
>
> Philadelphia is proud of its historic past, but I do not want you for a moment to think that all our glories are over. We, in 1940, are likewise proud of the Philadelphia of today. It is not my purpose to deliver to you a Chamber of Commerce speech in which I detail to you our manufactures, our bank clearings, our industries, our exports, and our imports: but you are to be here for several days, and we do not want you to go back to your homes without having familiarized yourself to some extent not only with the Philadelphia of the eighteenth century but also with the Philadelphia of the twentieth century.

After giving an interesting "bird's-eye" of many of Philadelphia's institutions of art and learning, as well as its facilities and natural beauties, Mayor Lamberton referred to Philadelphia as "the only city in the world with two major league baseball teams in last place," then concluded:

> But we in Philadelphia do not wish you to judge us by our material assets. We want you to think of us as the city with the friendly spirit. We are really proud to have you with us. We feel that you have conferred a great honor upon us in coming here. We hope that your deliberations will be successful. We hope that you will be comfortable and happy while you are in our midst. We will do everything to make you so, and we will not be satisfied unless when you leave Philadelphia you leave it happy that this meeting was held in this City and glad that you came to it.

Response for the Association

President Beardsley felicitously phrased the sentiment of members of the Association when he declared that:

> I know that each and all of you appreciate the cordiality of the welcome that has been extended to you on behalf of the Philadelphia Bar Association and on behalf of the City of Philadelphia, and that each and all of you would like audibly to respond to those addresses of welcome and to express your appreciation. It being impracticable for all of you to do so, there has been designated as your spokesman to respond to the addresses of welcome, the Chairman of the House of Delegates, Mr. Thomas Benjamin Gay.

Chairman Gay made fitting response to the welcome which had been so graciously extended. He said:

> I am sure that I express the sentiment of this convention, when I say we are all most happy to be here. It seems highly significant that at such a time in world affairs, when life and liberty are so lightly regarded in many countries, the lawyers of America should assemble in a community where the liberties of our people were first formally declared and the structure of our National government took form. For here it was, as the Chancellor of the Bar Association has reminded us this morning, that the hand of Jefferson wrote the Declaration of American Independence, and that convention which drafted our Federal Constitution conducted those memorable deliberations which brought forth what Gladstone so feelingly described as the most memorable work ever struck off at a given time by the brain and purpose of man, and to which we still look to secure the blessings of liberty to ourselves and our posterity.
>
> We are thus assembled in the lengthening shadows

of the founding fathers. To localize a Napoleonic expression, the centuries look down upon us. Threatened with involvement in a foreign war and confronted with the solution of domestic problems of transcending importance, the Nation now looks for leadership capable of preserving the democratic process and qualified to exert a forceful influence in the formation of an enlightened public opinion on the problems of this day.

To no profession or group has society a greater right to look for that kind of leadership than the organized Bar. Through tradition and training it is peculiarly qualified to speak and act in the public interest at such a time in the affairs of our Nation. If this leadership is unselfish and courageous, it may well serve to avoid much which has recently occured in other countries to strike down and destroy those things for which free men have always struggled and which are essential to the life of a democratic people.

Rich in the traditions of our colonial past, filled with the useful and ornamental handiwork of man, surrounded by a countryside overblessed by the beauties of nature and graced with a people of great social culture and charm, no other community in America could provide a greater inspiration for courageous leadership and forceful action on the part of the organized Bar than does the City of Philadelphia.

The President's Annual Address

Chairman Gay of the House of Delegates took the gavel during the delivery of the annual address by President Charles A. Beardsley, who made a persuasive appeal for preparedness on the part of all lawyers, so as to be ready to do their tasks in aid of National defense. President Beardsley's message elicited most cordial response from his auditors, and he was warmly applauded. The address appears elsewhere in this issue.

The Memorial Exercises

Resuming the chair, President Beardsley referred feelingly to the fact that during the year ending June 30, 1940, some 449 members were removed from its rolls by death. Their names were ordered spread on the records of the meeting and published in the Annual Report volume. Memorials were then presented for four deceased members who had held important official positions in the Association. Former President Guy B. Thompson of St. Louis, gave the memorial to Former President Earle W. Evans, of Kansas, which appears elsewhere in this issue. Former President William L. Ransom of New York paid tribute to the life and work of Mr. Walter S. Fenton of Vermont, in a memorial which is published elsewhere in this issue. Judge William H. Hargest of Pennsylvania presented memorials of Mr. George B. Young of Vermont and Mr. John Hinkley of Maryland, which will appear in a subsequent issue of the JOURNAL. At the conclusion of the memorials, the audience rose and stood in silent tribute to the 449 members who had passed away during the year.

Work of the Law Institute

With a tribute to the collaboration between the American Bar Association and the American Law Institute, President Beardsley introduced Circuit Judge Herbert F. Goodrich of Philadelphia. Judge Goodrich, who is Adviser of the American Law Institute, made an informative statement as to the current work of the Institute. Judge Goodrich's remarks will be summarized in a subsequent issue of the JOURNAL.

"Open Forum" Resolutions

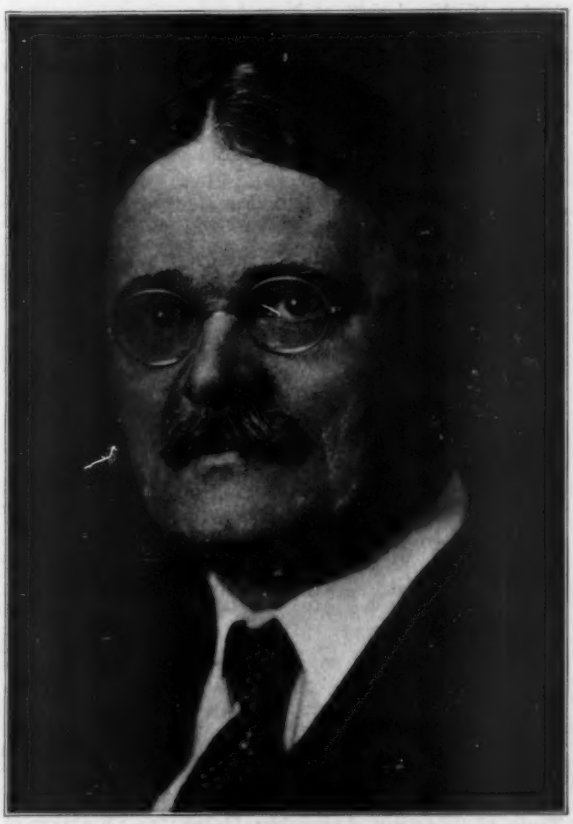
After announcements by the Secretary, Harry S. Knight of Pennsylvania, President Beardsley announced the opportunity for the offering of resolutions by any member, to be acted on at the "open forum," and gave notice also of the hearings before the Resolutions Committee.

Resolutions were introduced from the floor by Mr. Edwin M. Otterbourg, of New York; Honorable H. W. Sumners of Texas, Chairman of the Judiciary Committee of the National House of Representatives; Mr. B. Bayard Strell, of New Jersey; and Mr. Alfred L. Wolf, of Pennsylvania. These resolutions are quoted or summarized in connection with the subsequent session of the Assembly at which they were reported and acted on.

Election of Vacant Seats in House

All of the Assembly Delegates to the House of Delegates were reported by Secretary Knight as having registered their presence at the Convention. Vacancies in the office of State Delegate, by reason of absence, were reported from Illinois, Maryland, Nevada, New Mexico, North Dakota, Tennessee, Vermont, and the Territorial Group.

The session of the Assembly then adjourned, and the members of the Association present from the indicated jurisdictions then held meetings to choose State Delegates to serve until their successors are nominated by petition and elected by mail ballot.



ROSCOE POUND
Awarded American Bar Association Medal

Second Session

THE Wednesday morning session of the Assembly proceeded first with the nomination and election of four Assembly Delegates, to serve for two years in the House of Delegates. This was done in a leisurely fashion, but some interested members were late in arriving. This led to comment after the poll was closed, and to a suggestion that so important an election should not be calendared at the opening of a morning session.

The Section of Insurance Law contributed to the Assembly program at the second session a vital and well-attended symposium on "Federal Regulation of Insurance." The speakers were Mr. Louis H. Pink, Commissioner of Insurance in New York; Mr. J. Reuben Clark, Jr., of Utah; and Senator Joseph C. O'Mahoney, chairman of the Temporary National Economic Committee.

Election of Assembly Delegates

THE first scheduled item of business was the election of four Assembly Delegates to the House of Delegates, to serve for two years as successors to Mr. Bert M. Kent, of Cleveland, Ohio; Mr. Nathan William MacChesney, of Chicago, Ill.; Mr. Robert F. Maguire, of Portland, Ore.; Mr. John Perry Wood, of Los Angeles, California.

The "holdover" Delegates, who will serve until the close of the 1941 meeting, were stated to be Messrs. Walter P. Armstrong, of Tennessee; Ronald J. Foulis, of Missouri; William L. Ransom of New York; and Arthur T. Vanderbilt of New Jersey.

When President Beardsley called for nominations, Mr. Thomas F. Howe, of Chicago, nominated Mr. John R. Snively, of Rockford, Ill.; Mr. Harry S. Knight of Pennsylvania, nominated Mr. Joseph W. Henderson of Philadelphia; Judge Orie L. Phillips, of Colorado, nominated Ex-Judge James R. Keaton, of Oklahoma; Mr. Charles E. Lane, of Wyoming, named General Nathan William MacChesney, of Illinois; Mr. Ronald J. Foulis, of St. Louis, named Mr. Paul F. Hannah, retiring chairman of the Junior Bar Conference; Mr. Paul H. Sanders, of North Carolina, named Mr. Edwin M. Otterbourg, of New York; Mr. Charles W. Racine, of Toledo, Ohio, named Mr. Howard L. Barkdull of Cleveland; and Mr. Robert F. Maguire of Oregon named Ex-Judge John Perry Wood, of California.

Messrs. King of Pennsylvania, Fitts of Vermont, and Troxler of Florida, were named as tellers. The ballots were distributed, with the announcement that each member might vote for four or fewer nominees. There were no further nominations, but some questions were asked from the floor and answered at this stage. Finally, the polls were declared closed in the absence of objections, and the tellers proceeded to count the ballots cast, with the following results, as announced by Secretary Knight:

> **Mr. Henderson, 86, has the highest vote; Mr. Hannah, 73, has the second highest vote; Judge Keaton, 65, has the third highest; Mr. John Perry Wood, 52, has the fourth highest. Other votes are, Mr. Snively, 32; General MacChesney, 48; Mr. Ottenbourg, 23; Mr. Barkdull, 40. Mr. Henderson, Mr. Hannah, Judge Keaton, and Mr. Wood, are elected.**

Time of Electing Assembly Delegates Questioned

While the tellers were at work, Mr. Joseph F. O'Connell, of Boston, protested the holding of the election at a time, and in a manner, which failed to produce a large attendance for the balloting. He said, in part:

> After those names were nominated, part of the crowd that is here now came in. Before the morning is over, this auditorium will undoubtedly be filled with men who wanted to do something, who might have done something. I am not carrying on any battle. . . . I am simply calling attention to this, that this thing should be changed and that if this Assembly has the right to elect four Delegates each year, there ought to be some care taken to see that it is done in a proper and in a decent way.

A good many members who had come late to the convention hall applauded these views. President Beardsley said he would recommend that next year a better arrangement as to time be made.

Mr. E. Crosby Kindleberger of New York asked: "Why can't we have the poll over again?" President Beardsley ruled that "The poll has been completed." Mr. Charles E. Lane disagreed with the protest against the time and manner of the poll.

Insurance Section Forum

The remainder of the second session of the Assembly was thereupon devoted to a forum under the auspices of the Section of Insurance Law, with Mr. John W. Cronin, its chairman, presiding. This contribution by the Section to the Assembly program evoked a large attendance and lively interest.

Chairman Cronin referred to "Federal Regulation of Insurance" as an issue which "closely concerns every family and every business in the nation." The first speaker, Mr. Louis H. Pink, Commissioner of Insurance of the State of New York, was introduced as "a man who in his own person symbolizes the finest traditions of insurance, symbolizes a matchless record of sound insurance regulation." His address will appear in the November issue together with the other papers of the Insurance Section Forum.

Chairman Cronin next presented Mr. J. Reuben Clark, Jr., of Utah, former United States ambassador to Mexico, at present First Counsellor in the First Presidency of the Church of Jesus Christ of Latter Day Saints. Mr. Clark presented a trenchant paper in opposition to "Federal Regulation of Insurance." His address, likewise, will be presented in the Insurance Forum in the November issue.

The next speaker was the Honorable Joseph C. O'Mahoney, United States Senator from Wyoming, distinguished lawyer, Chairman of the TNEC, member of the Judiciary Committee of the Senate. In presenting him, Chairman Cronin said, in part: "As a member of that Committee, he endeared himself to many of us by his firm, vigorous, and highly effective opposition to the so-called 'Court-packing' bill. At every stage of his notable career he has shown himself a man of high courage, of integrity, and of statesmanlike breadth of view."

Senator O'Mahoney's address was also on "Federal Regulation of Insurance" and was followed with close interest by many lawyers and executives concerned with various forms of insurance. His address will appear in the November issue.

The second session of the Assembly then adjourned after sundry announcements by the Secretary, Mr. Harry S. Knight.

Third Session

THE third session of the Assembly was one of its liveliest and most animated. The Texas State Bar Association and the Cleveland Bar Association each received the Association award for outstanding work, among many competitors. The record of achievements was impressive. The Ross Essay prize of $3,000 was bestowed on Professor Thomas F. Green, of Georgia, who read parts of his brilliant essay. The "Open Forum" was largely attended and replete with interest. A timely resolution creating a Committee on National Defense, to mobilize assistance by lawyers, was adopted after debate. Congressman Sumners of Texas made an effective and successful appeal for Association support for his bill to provide a supplemental method of judicial trial for Federal judges accused of misbehavior in office. The Assembly quickly tabled, without debate and without expressing opinion one way or the other as to their merits, two resolutions from the floor against a third-term for Presidents of the United States and a Resolutions Committee substitute for a single six-year term. Amendments to the Constitution and By-laws of the Association were presented and acted on.

THE third session of the Assembly on Thursday morning, devoted itself to a formidable calendar of interesting and important business.

First was the presentation of the annual award by the Association to the State Bar Association and the local Bar Association which are deemed to have made, respectively, the most notable contributions by way of outstanding work during the Association year. There were many competitors for these awards, and a surprising amount of specific and useful accomplishments were reported. An account of these Bar Association awards appears elsewhere in this issue.

The remaining items of business are discussed in order, hereafter, and in detail.

Award of the Ross Essay Prize

President Beardsley, referred to the last will and testament of the late Erskine M. Ross, of California, long a devoted member of the Association, a Judge of the United States Circuit Court of Appeals for the Ninth Circuit. One of the bequests made by Judge Ross was as follows:

> I give, devise and bequeath out of my said estate to the American Bar Association the sum of $100,000 to be by it safely invested, the annual income of which to be offered and paid as a prize for the best discussion of a subject to be by itself suggested for discussion at its preceding annual meeting.

The subject of the Ross Essay for 1940 was: "To What Extent May Courts Under the Rule Making Power Prescribe Rules of Evidence." The winning essay as determined by the Board of Governors, upon the recommendation of a committee which read the many essays presented, was that of Mr. Thomas Fitzgerald Green, a resident of Athens in the State of Georgia, a member of the faculty of the Law School of the University of Georgia, an active member of the Georgia Bar Association and a member of the American Bar Association since 1934. The committee of award was made up of Associate Justice William O. Douglas, of the Supreme Court; Dean Robert S. Stevens, of the Cornell Law School; and Ex-Judge William L. Ransom, of New York.

President Beardsley introduced Professor Green, who read excerpts from his winning essay, which was published in full in the June JOURNAL. Professor Green then was formally presented with the certificate of award, together with the Association's check for $3,000, the amount of the 1940 prize. Announcement was made of the Ross Essay contest for the $3,000 prize to be awarded in 1941. Details of the subject and the competition appear elsewhere in this issue.

Open Forum Debates Resolutions

The next event scheduled was the report of the Resolutions Committee, headed by former President Frederick H. Stinchfield of Minneapolis, upon the various resolutions which had been offered by individual members from the floor. This "open forum", as always, aroused lively interest and debate. Chairman Stinchfield first announced that—

> The Resolutions Committee has held its necessary public hearings, three of them, and sat in an equivalent number of executive sessions. There were seven resolutions. One of them has been withdrawn, leaving, for consideration by this Assembly, six. Our action with relation to them is now reported to you.

Resolution No. 1, National Defense

Resolution No. 1 had been offered by Mr. Edwin M. Otterbourg, of New York, with whose approval various changes were made in the test of the resolution. In reporting favorably, Chairman Stinchfield said:

> It is the feeling of the Committee that this resolution is predicated on the public interest. Under present world conditions, there can be no advancement in the science of jurisprudence and no promotion of the administration of justice without adequate National defense.
>
> It is the hope of the Resolutions Committee that if the resolution is approved by the Assembly, early action by the House of Delegates will enable the incoming President to appoint this Committee at an early date, and that the announcement of the appointment will be accompanied by a statement by the President of this Association to the effect that the American Bar Association stands ready and willing to cooperate fully with governmental agencies in the administration of the compulsory military selective service law and all kindred laws designed to provide an adequate National defense.

Text of the Resolution

In the form reported by the Committee, the Resolution read as follows:

> Whereas, Those ideals of liberty, freedom and human rights which constitute the basis of the democratic form of government are threatened by the present world crisis; and
>
> Whereas, The United States is facing the necessity of organizing our manpower and material resources to defend and protect our country against destructive forces which may threaten our National security from within or without; and
>
> Whereas, The lawyers of America are unqualifiedly devoted to the Constitution of the United States which they have sworn to uphold, and by virtue of their calling are pledged to protect and preserve human rights, aid in the administration of justice, and in the maintenance of law and order, and are eminently qualified, through special training, study and education, to be of aid and assistance to the Government; now therefore be it
>
> RESOLVED, That the House of Delegates be requested to authorize the appointment by the President

of this Association of a Special Committee to be known as the COMMITTEE ON NATIONAL DEFENSE, which Committee shall cooperate with any and all governmental agencies in the matter of the participation by the American Bar Association, and by lawyers generally, in preparation for national defense, such committee to be charged with the duty of consulting with the President of the Association, and of keeping him fully advised in reference to its activities; and be it further

RESOLVED, That the House of Delegates be requested to ask the Junior Bar Conference to cooperate with such Committee and, in addition to its speaking program on National Defense, to render such service in reference to participation by the American Bar Association and by lawyers generally in national defense as such Committee may require of it, and under the direction and supervision of such Committee.

Debate on National Defense Resolution

Mr. Otterbourg spoke in favor of the resolution as amended by the Committee, and moved that it be adopted. He said in part:

> In America there are more than 160,000 members of the Bar. In every town and hamlet and city there are hundreds of these skilled, trained professional men, dedicated to public service, engaged in our profession, all of them sworn to uphold the Constitution of the United States, to aid in the maintenance of law and order and in the proper administration of justice; and they constitute in themselves a wealth of such specially skilled, trained and educated men as are most useful and most essential in aid of a government such as ours, when democracy is girding its loins in support of a defense program which is necessary against those forces that are now moving—which, if they succeed, will destroy the very essential, fundamental things that, as lawyers, we believe in and are sworn to maintain and uphold. . . . The purpose of the resolution, is to have the American Bar Association, as the national representative of this great group of men, mobilize that group of men and organize it in aid of defense.

Former President Henry Upson Sims of Alabama appealed earnestly to the members present in the Assembly, against the adoption of the recommended resolution. He said in part:

> Whatever I say requesting you or urging you not to adopt this resolution, will be from my heart, and in the interest of the Association. I happened to be President of this Association when the Prohibition question was voted on. While I was not a Prohibitionist, I absolutely opposed the Association's having a referendum or taking any part in it, as most remotely connected with the interests of this Association; and it bred disunion and unfortunate bitterness at many of the meetings. When the question of whether the time of the meeting of Congress should be changed was put before the Association, I opposed continuing that Committee, because I thought it had nothing whatever to do with the functions of this Association.
>
> I hope you will each consider before you vote on this motion, inspired in patriotism though it may be, inspired in a desire to commit the lawyers to support what is at present a sort of political issue, perhaps, between the candidates, a sort of political issue between the people, and the perhaps unnecessary preparation. . . . All of us are in favor of defense, all of us are willing to give our lives in the defense of our country. . . . I submit that it was merely the patriotic feeling of the gentleman from New York and the gentleman of the Committee not to oppose any measure which would indicate that we are not in sympathy with the defense of this country. Everybody knows that we are, so why pass such a resolution?

Mr. Louis S. Cohane, of Michigan, strongly supported the resolution. "It is a matter upon which we all are completely united," said he. Mr. Otterbourg waived his right to close the debate. The resolution as amended was decisively adopted.

Resolution No. 2 by Judge Sumners

Then ensued one of the most striking and significant episodes of the Convention. An editorial in this issue is devoted to it. Chairman Hatton W. Sumners of the Judiciary Committee of the National House of Representatives, came to Philadelphia to offer the following resolution in support of a Bill which he is urging in the Congress:

> BE IT RESOLVED, By the American Bar Association, that it favors the enactment by Congress of legislation to provide for trials of and judgments upon the issue of good behavior in the case of certain Federal judges, such legislation to provide substantially that whenever a resolution of the House of Representatives is directed to the Chief Justice, stating that in the opinion of the House there is reasonable ground for believing that the behavior of a judge of the United States Court, the District of Columbia, of the territories and possessions, to hold office during good behavior, except the Justices of the Supreme Court of the United States, has been other than good behavior within the meaning of that term as used in Section 1 of Article III of the Constitution, the Chief Justice shall convene or cause to be convened the Circuit Court of Appeals of the circuit in which the judge resides in Special Term for the trial of the issue of good behavior and the right of such judge to remain in office. The Chief Justice shall designate three circuit judges to serve on such court. Any one or more of such judges may be circuit judges of circuits other than the one convened in Special Term.
>
> If the judge whose good behavior is in question is a circuit judge, no judge of the same circuit shall serve. The accused judge shall be given notice by the Chief Justice and an opportunity to object to any intended designation of a circuit judge to sit on the court.
>
> Thereupon, the Attorney General shall institute a civil action in such court to determine the right of the judge to remain in office. The Attorney General shall be authorized to avail himself of the services of such members of the House of Representatives as may be designated by resolution of the House to aid in the prosecution. The trial shall be without a jury.
>
> If the determination is that the behavior of the judge has been other than good behavior within the meaning of the term as used in Section 1, Article III of the Constitution, the judgment of the court shall be that of removal from office, but no other penalty shall be imposed by the court.
>
> Either the United States or the defendant judge may appeal within thirty days after rendition of judgment, on both the law and facts, to the Supreme Court.
>
> Circuit Court of Appeals shall be defined to include the United States Court of Appeals of the District of Columbia, and the District of Columbia shall be deemed a judicial circuit.

Resolutions Committee Recommends Study

Chairman Stinchfield reported that—

> The Resolutions Committee recommends that this resolution be referred to the Committee on Jurisprudence and Law Reform for early consideration by that Committee. In the opinion of this Resolution Committee, the questions of law bearing upon the Federal Constitution involved in the present resolution call for considera-

tion by a Committee of this Association accustomed to pass upon such matters after mature deliberation.

Striking Remarks by Judge Sumners

Judge Sumners was recognized from the floor, and moved that his resolution be adopted, instead of being referred for further study. The distinguished member of the Congress then made an earnest and persuasive speech in favor of his resolution, and the members present recognized quickly the significance and compliment inherent in his action.

Congressman Sumner's Speech

"This resolution purposes something to supplement the present procedure of removal of judges by impeachment. There is, strange to say, a good deal of confusion among the members of the Bar with reference to the relationship of impeachment to the removal of Federal judges guilty of conduct for which they ought to be removed.

Strange to say, a great many lawyers think that there is something in the Constitution with regard to the impeachment of a Federal judge. The basic, applicable provision of the Federal Constitution is that all civil officers may be removed by impeachment, and the only reason why Federal judges may be impeached is that they are civil officers, and not that there is any specific reference in the Constitution to them.

I want to discuss briefly now the constitutional feature which, of course, should be first considered. The Courts of this country, without exception, in so far as I know, hold that the fact that a civil officer may be impeached does not establish the only method by which a civil officer may be removed. It is universally held, under the American constitutional system, that civil officers may be removed by *quo warranto*—I don't want to argue these questions with such an audience as this, and I am not going to try to discuss this matter in proper sequence, because I am going to take advantage of the type of audience which I have.

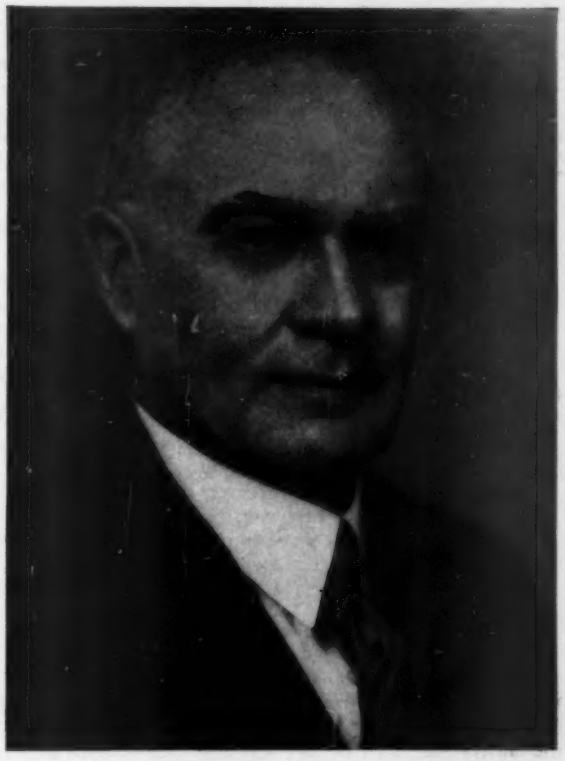
Senate Cannot Hear Impeachment Cases

A gentleman a moment ago spoke of the importance of recognizing that time is of the essence of things. I am trying to impress upon the American Bar and upon the judges themselves, that time is of the essence with reference to this matter, because we are going somewhere from where we are. Anybody with any practical sense ought to know that the perfectly ridiculous procedure, the only procedure which we now have, of removing an unfit judge, a man who has disgraced the office which he holds, is to go down before the Senate of the United States. The entire Senate is required to turn its back upon the entire business of the Nation, with all the tremendous responsibilities, and sit for days, and days, and days, to determine an issue perhaps of whether or not a district judge ought to be separated from the service.

We must not be foolish, people. The common sense of the Nation is going to force us away from that system as the only system by which it can be done; and it is up to the judges and up to the lawyers as to whether they will move in the direction of establishing judicial control, or whether you are going to move in the direction of establishing greater and greater power of the Department of Justice with reference to the judges of this country.

Lawyers Should Act in Time

We are going somewhere from where we are. I have been telling the Bar that for years, and they sit down here and pass resolutions and resolutions, pass it over and over; and one of these days they are going to wind up with the situation that we had with reference to the Courts a few years ago, and wonder how it has happened; and it will happen because you don't do what you ought to do when you could have done it safely. That is the truth about it.



Harris & Ewing

HON. HATTON W. SUMNERS
Chairman, Judiciary Committee
House of Representatives

I have appeared several times before the Senate, trying an impeachment proceeding. I have sat there and offered evidence before the Senate, with only three Senators sitting there hearing the testimony. They won't try these cases. They can't try these cases. They are under pressure from every possible angle. They are just a few human beings, but they represent the entire Nation. It is so absurd that I am almost ashamed to argue it before an intelligent group of people. (Applause)

I am not afraid to go to the Courts on this question if you adopt this resolution. Why? The Courts of the country hold unanimously that because you can remove a civil officer by impeachment, is no reason why you can't remove him by civil action. You tell me the Courts of this country, having established that rule, are going to try to exempt themselves, who are only impeachable because they are civil officers? What sort of shape would they be in before the Courts of the country, establishing the universal rule that these other civil officers may be removed by impeachment and undertake to protect themselves from such a removal?

Protecting Independence of the Judiciary

I have been interested in protecting the judiciary of this country. I have been interested, as you know I

have; and when I come to you, you won't study it. This is passing the buck. (Applause) I am not arguing with you; I am making a statement of fact. I am down there, and I know what is happening. I know that if you don't do something, public opinion is going to support the increase of power of the Department of Justice with reference to the Courts of this country, and I say that not in criticism of the Department of Justice but because the common sense of the Nation is forcing us away from impeachment as the only possible method of getting a crooked judge off the bench.

The Nation won't stand for it. It is not fair to the respondent; it is not fair to the country. Impeachment was never intended as an ordinary method of dealing with offenders against the public interest. Impeachment originated, as you ladies and gentlemen know, in the Fourteenth Century, during the reign of Edward III, and only came into operation because there were great offenders who couldn't be reached through the ordinary processes of the Government's power.

When we adopted the Warren Hastings impeachment, practically contemporaneous with our Constitution, there hadn't been three impeachments in England in a century and a quarter—when we adopted our Constitution. There have been practically no impeachments here.

Buffer Between Judge and Litigant

I want to say this, speaking generally, the Federal judges of this country are high-class men, but just as one crooked shyster lawyer will cast a reflection upon the entire Bar, four or five crooked judges reflect upon the integrity of a great body of men in the judiciary. (Applause)

The Federal judges of this country ought to come and help us, help us while they can. We can move this thing now toward the judiciary. The Bill which I propose I have taken a long time to work out, and I worked it out, guided by the experience in prosecuting impeachment matters before the Courts.

I am as anxious as anybody to preserve a buffer between a disgruntled litigant and the judge. I don't want it to be possible for the Department of Justice —you all know I am not reflecting upon the present personnel or any other personnel, but I don't want it within the power of the Department of Justice of itself to initiate proceedings against a Federal judge. I want to change the present method as little as possible.

The Judiciary Committee of the House, and the House itself, has demonstrated during the long years of its responsibility that it is a good buffer to stand between a judge and somebody who would make him afraid. I have tried to preserve that in my Bill. I provide in the Bill, which I hope you will examine, that the judge can't be got at by anybody. Mark what I tell you. I am talking to you now and I want you to remember it. I introduced a bill two years before this row broke out among the judges, to try to make it possible for a Supreme Court Justice to retire instead of resign, as we had permitted in the Act of 1919; and the American Bar Association didn't help me to get it through. Two years after that it was too late, the row was on.

Wake Up Before It is Too Late

You are going to wake up one of these days and it is going to be too late. Listen to me; I am telling you what I know to be the truth—it's going to be too late. We can do it now. We can enact a law now that will make it, as I say, impossible for anybody to make a judge afraid, or for anybody to get at him, until the matter has been considered by the Nation in assembly in the House of Representatives. Then when the House of Representatives investigated and found that this judge is probably guilty of conduct that is not good, then and only when it certifies that fact can a Court get into action. Nobody can get to him then, and he goes to the Courts, where he ought to go and not to a political body like the Senate.

It is of the highest national importance that these judges be made not afraid. There ought to be a buffer between the judge and the ability of anybody to put him on his defense. We provide it in this Bill, then we send him to judges, not to a jury, but to three judges; and a man on the bench who is afraid to have the question of whether or not he has violated his contract with the people—good behavior is a condition in the tenure clause—it is a condition in the contract between a judge and his people—why should a judge be afraid to have that issue litigated before judges? That is all we are providing.

"Get Busy While You Have a Chance"

I am about to make a speech. (Applause) I want to tell you now, gentlemen, you had better get busy while you have got a chance. I want you to remember that today I told you you had better get busy while you have a chance. We can do something about this thing. we can supplement this proceeding, we can leave it possible for the Senate to call to trial the President of the United States and the Justices of the Supreme Court, and they sit there and try, if there should unfortunately be an impeachment, but they won't try as a district judge, and you know it. There is nobody who doesn't know it. The common sense of the nation is going to make us go from where we are.

Now, I want you all to get busy, and the next time if I get a chance to get this thing up, I don't want to see the indications that some judge that is afraid to be tried by judges has been getting in contact with somebody who has been getting some receiverships and he is bringing pressure on members of Congress to knock out my Bill."

Support for Judge Sumners' Motion

Prolonged cheers greeted Judge Sumners' realistic plea for action. Former President Arthur T. Vanderbilt came quickly to the support of the motion. He said, in part:

> The federal courts have no stauncher friend anywhere in the country than Judge Sumners. (Applause.) The work that he did in the Supreme Court controversy of two or three years ago required the highest degree of courage, and there wasn't a member of the Bar but was proud of the fact that Hatton W. Sumners was a lawyer and a member of the Bar. (Applause.)
>
> It was my privilege as chairman of the committee appointed by the Attorney General of the United States to work with a similar committee appointed by the Chief Justice of the United States, of which Judge John J. Parker was the chairman, on the formulation of a bill which resulted in the administrative office of the United States Courts. I think every member of each of those two committees fully realizes the fact that that bill could never have been enacted into law, a bill which is of the greatest importance to the independence of the Federal judiciary had it not been for the aid of Judge Sumners.
>
> In addition to that, it was largely through his aid that this past year the bill relating to criminal rules,

giving to the Supreme Court the same power to formulate rules in criminal cases that they were given several years ago with respect to civil cases, was enacted. That was largely through the aid of Judge Sumners. I cite these things to prove his very deep and abiding interest in the welfare of the courts.

Now, with respect to this particular bill, I am frank to say that when he first talked to me about it, I could not see his position at all; but the more I have studied it, both as a practical matter and as a matter of constitutional law, the more I am convinced that he is on absolutely sound ground, and the more I am convinced of the wisdom of the warning that he has given us here this morning, that if we don't act, the time may possibly come when we may very much regret that we did not act when the opportunity was still here.

I am convinced that Judge Sumner is absolutely correct as a matter of law when he says that impeachment is not the sole method of removing a judge from office. I am convinced as a matter of practical fact that the custom that has developed in the trial of these cases of having a mere handful of Senators hear the evidence and then all of the Senators that desire voting upon the evidence that they haven't heard, is a disgrace to a country that prides itself on its ideals of justice. (Applause.) Therefore, I want to urge with what small degree of power I have that we cast our vote in favor of the resolution as proposed by Judge Sumners.

Statement by Mr. Walter P. Armstrong

Chairman Walter P. Armstrong of the Committee on Jurisprudence and Law Reform made for information a brief factual statement as to the status of the Bill in the Association. He said:

Two or three years ago, a similar bill, which I think also was introduced by Mr. Sumners, was referred to that Committee, considered by it, reported favorably, and endorsed by the Association. Last year, as chairman of the committee, I appeared before the Board of Governors and asked authority to advocate in Congress all measures theretofore approved by the Association. That authority was given, but this particular bill, the one in substance similar to the one discussed this morning, was excepted from that authority. I join in what Mr. Vanderbilt has said about Chairman Sumners. There is no man in Congress for whom I have greater personal regard over many years or for whose opinion I have greater respect. I was chairman of the committee when the other bill was considered, and I concluded that Chairman Sumners was right in regard to that particular bill. I agree with everything he says about the difficulty of impeachment, or the unsatisfactory nature of it.

The previous question was ordered on motion of Mr. Thomas B. Gay, and Judge Sumners' resolution was enthusiastically adopted, with few dissenting votes.

Resolution No. 3, Public Defenders

Resolution No. 3, offered by Mr. B. Bayard Strell of New Jersey, was amended by the Committee on Resolutions to read as follows:

Whereas, The proposed establishment of a system to secure competent counsel for indigent persons accused of crime, has engaged the thoughtful attention of the Bar and the public for many years and is a subject of vital interest and importance in the administration of criminal justice; and

Whereas, The American Bar Association at its 1939 annual meeting in San Francisco approved in principle the introduction of public defenders in the Federal Courts, and the Junior Bar Conference approved in principle the establishment of a system of public defenders, and

Whereas, The approval of a system of public defenders for metropolitan areas is not by implication a rejection of the voluntary defender plan where it is already established and functioning to the satisfaction of the community; now, therefore, be it

RESOLVED, That the American Bar Association approve in principle the appointment of public defenders in State Courts, for metropolitan areas, where the amount of criminal business justifies the need; and be it further

RESOLVED, That consideration of ways and means to carry the principle thus declared into effect and practical application be referred to the Standing Committee on Legal Aid Work.

Chairman Stinchfield reported that—

The feeling of the Resolutions Committee is that on a matter referring so particularly to a committee of this organization, that the proper action is that the resolution be referred to the Legal Aid Committee, and when it is ready to suggest that something of the sort proposed here be done, that that committee should propose it.

"I do not choose to disagree with the distinguished Resolutions Committee," said Mr. Strell, "and ask for no action except as recommended by that Committee." After discussion it was so ordered.

Resolution No. 4, Military Aviation

Resolution No. 4 was by Mr. Alfred L. Wolf, of Philadelphia, as follows:

The Aircraft Owners and Pilots Association having undertaken to provide training in military aviation for civilian pilots, as a part of the program for national defense, and having requested that members of the American Bar Association assist in supervising written examinations of pilots applying for such military aviation training; it is hereby

RESOLVED, That the American Bar Association urge its members throughout the nation to cooperate with the Aircraft Owners and Pilots Association by assisting in the conduct of examinations of civilian pilots applying for training in military aviation.

The Resolutions Committee recommended reference of this resolution to the new Committee on National Defense. This was done.

Resolution No. 5, Records of Legal History

Resolution No. 5, by Mr. Albert Smith Faught, of Philadelphia, was as follows:

RESOLVED, That the President of the American Bar Association should be authorized and requested to appoint a special Committee on Legal History consisting of one person from each State and from the District of Columbia and from the Territorial Group.

The Special Committee on Legal History should be requested to consider and report on matters relating to (a) the history of the Courts of the United States, and of the several States, and (b) to the possible publication of early Court records which are not now available in printed form.

The Resolutions Committee recommended that the resolution "be referred to the House of Delegates and to its Chairman for such action as either or all of them may deem wise, it seeming to the Resolutions Committee that this resolution covers a matter and such character of administration that the House of Delegates can more properly determine what is the desirable action."

This was agreeable to the author of the resolution. He said:

The reason for presenting this particular resolution at this time is due to the fact that there are a great

many records available in print to historians and not in print in the historical libraries and elsewhere which should be made available to lawyers.

I wish to take your time only for one illustration. Judge Sumners has stated just recently that there were practically no impeachment trials in the United States prior to the Revolution, and mentioned the Warren Hastings illustration as an example.

In recently preparing an article for the consideration of the editor of the JOURNAL of the American Bar Association, I found that there were two early impeachment proceedings in Pennsylvania. Those records should be made available to lawyers. I refer to the impeachment of one Nicholas Moore, who was the first judge sitting as a presiding judge in Philadelphia under William Penn, and later an impeachment of Thomas Lord, so I am very keen that the American Bar Association take steps to hasten the time when we will have a committee that will be prepared to locate these records, to encourage others to publish them where they should be published, to guide others so that when they do publish them they may be made available in a form suitable for use by the lawyers and judges of this country.

The motion to refer to the House of Delegates was adopted.

Resolution No. 6 was not reported, having been withdrawn by its author.

Assembly Tables Third Term Issue

Resolution No. 6, offered by Mr. E. C. Bailly, of New York City, and Mr. H. Graham Morrison, of Bristol, Va., led to a tense and spirited episode. It raised the so-called Third Term issue. At the request of Chairman Stinchfield, Secretary Knight read the resolution as first introduced, as follows:

Whereas, George Washington, the Father of our Country, absolutely refused to serve a third term as its President because he considered it unwise and dangerous to democratic institutions to permit one man to remain so long as its Chief Executive; and

Whereas, Thomas Jefferson, James Madison, James Monroe and Andrew Jackson respected the sound precedent thus established and did not seek, nor did their friends seek for them a third term as President; and

Whereas, General Grant was refused by the Republican National Convention in 1880, a nomination for a third term for President which had been sought for him by his friends; and

Whereas, one of the fundamental weaknesses of this Republic from its beginning has been the eligibility of its Chief Executive for reëlection, causing that great and impartial student of our institutions, the French political philosopher, De Toqueville, to claim in 1831, less than fifty years after the adoption of our Constitution:

"Intrigue and corruption are the natural defects of elective government; but when the head of the State can be reëlected these evils rise to a great height, and compromise the very existence of the country. When a simple candidate seeks to rise by intrigue, his maneuvers must necessarily be limited to a narrow sphere; *but when the chief magistrate enters the lists, he borrows the strength of the government for his own purposes.* (Italics supplied.)

"In the former case the feeble resources of an individual are in action; in the latter, the State itself, with all its immense influence, is busied in the work of corruption and cabal. The private citizen, who employs the most immoral practices to acquire power, can only act in a manner indirectly prejudicial to the public prosperity. But if the representative of the Executive descends into the combat, the cares of government dwindle into second-rate importance, and the success of his election is his first concern.

"All laws and all the negotiations he undertakes are to him nothing more than electioneering schemes; places become the reward of services rendered, not to the nation but to its Chief; and the influence of the Government, if not injurious to the country, is at least no longer beneficial to the community for which it was created."

MR. GUY RICHARDS CRUMP (Los Angeles, Calif.): "Point of order! I raise the point of order that it is improper in a resolution to have long quotations from some philosopher or writer. You might as well put in Washington's Inaugural Address under the guise of its being part of a resolution. I move, if I may do so, or I suggest, as a point of order, that the further reading from De Toqueville be dispensed with."

PRESIDENT BEARDSLEY: "There are only five lines left of this quotation, and the point of order will be overruled."

Secretary Knight thereupon continued reading the resolution.

"It is impossible to consider the ordinary course of affairs in the United States without perceiving that the desire of being reëlected is the chief aim of the President: that his whole administration, and even his most indifferent measures, tend to this object, and that as the crisis approaches, his personal interest takes the place of his interest in the public good. The principle of re-eligibility renders the corrupt influence of elective governments still more extensive and pernicious."

Now, therefore, be it RESOLVED, By the American Bar Association, in Sixty-third Annual Convention assembled, at Philadelphia, Pa., the Cradle of Liberty, that it unqualifiedly condemns the seeking of a third term by Franklin Delano Roosevelt and his friends as contrary to the teachings and example of the Founding Fathers of this Republic and subversive of the principles upon which it was established; and further

RESOLVED, That this Association does hereby endorse and approve the Resolution introduced into the Senate of the United States of America by the Honorable Edward R. Burke, of Nebraska, a member of this Association, which calls for an amendment of the Constitution so as to limit the term of President to six years, without eligibility to reëlection as a highly desirable change which will remove this canker from our federal government and prevent the intrigue, corruption, cabal, and other serious evils which the eligibility of the President for reëlection has caused in the past.

Resolutions Committee Offers Substitute

Ex-Judge Clarence N. Goodwin of Washington, D. C., sought to move to lay the resolution on the table as "scandalous and impertinent." President Beardsley ruled such a motion out of order until the Resolutions Committee had made its report and there was a motion pending, to which a motion to table could be addressed. Chairman Stinchfield then reported that the Resolutions Committee had drawn, and recommended to the Assembly, a substitute resolution as follows:

RESOLVED, That this Association does hereby approve the adoption of an amendment to the Constitution of the United States so as to limit the term of the President of the United States to six years without eligibility for reëlection.

Minority Report from Resolutions Committee

Chairman Stinchfield stated that there was a minority of the Resolutions Committee, which did not favor the consideration of either the original resolution or the substitute resolution, at this time. He read the minority report as follows:

A substantial minority of the Committee cannot agree

with the report of the majority on this resolution and wish to submit their reasons to the Assembly. In the first place, we wish to make clear that we express no opinion and authorize no inference whatsoever as to the merits of the question.

In the second place, we do not ourselves believe that the subject matter is within the legitimate objects of this Association as prescribed in our Constitution. For this reason we do not wish to condone any entering wedge leading to a general disregard of our fundamental rules, especially when based upon the enthusiasm or heat of the moment. The question must be treated, if we are to maintain or deserve our prestige, as a strictly abstract one, utterly disassociated from the immediate situation.

We reach this conclusion with the realization that the question is not entirely closed to debate, but we believe that the existence of a substantial argument on both sides makes it desirable as a matter of policy that the Association express no opinion one way or the other on the merits at this time.

In the third place, it must be obvious to any unprejudiced minds that the primary object of the resolution, coming as it does at this time, is a political one. It is only incidentally motivated by a desire to bring up for discussion a problem of the desirability of amending our form of government in a particular way. The major objective is to prevent a particular man from achieving a third presidential term. If this were not so, the Association would not have waited until its sixty-third Annual Meeting to discuss a question which has often been agitated over a period of at least a century. If the resolution is designed to accomplish the proper purpose of advancing the science of jurisprudence, or to attain any other expressed object of our existence, then its consideration ought legitimately to come at a moment of calm, with complete absence of prejudice.

If the Association should disagree with us by regarding the subject matter as authorized, we should certainly justify increased standing with the people as a whole if we were also, under existing circumstances, to refuse to act until our next meeting, when all possibility will be removed of our being accused of taking part in political matters.

For these reasons, a minority of the committee recommend that this resolution (the substitute resolution) be not adopted, without prejudice to bringing the subject matter before the Association at some future date.

Motion to Table Whole Subject

The purpose of a large majority of the members present to avoid divisive debate and action by the Association was quickly manifested, irrespective of their personal and political views on the merits of the third-term issue. Mr. George R. Grant, of Massachusetts, moved that the Committee's "amended motion with the resolutions upon which it is based be laid upon the table." There were many "seconds" for this motion.

As the author of the original resolution, Mr. Bailly was recognized; and he moved the adoption of his own resolution, which was seconded.

Judge William L. Ransom, of New York, and several others (who later stated that they favored postponing until after the 1940 election the consideration of the Committee's substitute proposal for a constitutional amendment) sought recognition, on the ground of personal privilege. "You are out of order, Judge Ransom," declared President Beardsley. "It is well known to all of us that a motion to lay on the table is not debatable either under the appearance of privilege or otherwise."

Subject Is Tabled

A vote being taken by the raising and counting of hands, the motion was carried by a vote of 271 "aye" to 126 "no." There was no indication that the individual opinions of the members present, on the merits of the resolutions themselves, entered one way or the other into the vote as taken. Many of those who voted against tabling stated later that they did so because they were in favor of deferring the matter until the proposed constitutional amendment could be considered apart from a National political campaign. The overwhelming view in the Assembly was thus against the injection of such an issue into the Association debates, at a time when it is pending in the political forum.

Effect of Tabling

President Beardsley ruled, on a question by Mr. Walter P. Armstrong, that the motion "carried all related matters, including the recommendation of the Committee." Mr. Bailly appealed from the ruling, and the chair reversed it, to permit Mr. Bailly to move the adoption of the Committee's substitute. Mr. Crump of California then raised the following point of order:

> The Chair having ruled in response to Mr. Armstrong's question, the motion to table carried with it not only the original resolution as offered, but the amendment offered by the Resolutions Committee, and that ruling by the Chair having been made without appeal before the vote was taken, the gentleman cannot wait until he gets an adverse vote and then appeal from the Chairman's ruling or ask to have another vote.

"The point of order having been raised," said President Beardsley, "the Chair sustains the point of order." That ended the entire matter.

This concluded the action on the report of the Resolutions Committee.

Amendments of Association's Organic Law

The Assembly then took up the various amendments which had been filed and published, as to the Constitution and By-laws of the Association. Contrary to the usual practice, these amendments had been reached for action first on the House calendar, and Chairman Gay of the House of Delegates reported to the Assembly the action taken by the House. In view of the debate which had taken place in the House on several of the proposals they were not discussed further in the Assembly which was ready for a vote.

First was a proposal sponsored by Mr. Harry P. Lawther of Texas, as a substitute for the amendment he had originally filed. In its changed form as adopted by the House, the Lawther amendment was to permit members of the House, as such, to nominate candidates for the office of Chairman of the House, in addition to the usual procedure for nominations by the State Delegates and by independent petition signed by 100 members. The proposal would amend Article VIII, Section 2, of the Constitution to read in pertinent part as follows:

> Section 2. *Other Nominations.* Not earlier than seventy days nor later than forty days before the opening of the annual meeting, one hundred members of the Association in good standing, of whom not more than fifty may be accredited to any one state, may file with the Secretary a nominating petition (which may be in parts) duly signed, making other nominations for the

office of President, Chairman of the House of Delegates, Secretary or Treasurer. *Not earlier than seventy days nor later than forty days before the opening of the annual meeting, fifteen members of the House of Delegates may file with the Secretary a nominating petition (which may be in parts) duly signed, making other nominations for the office of Chairman of the House of Delegates . . .*

Adoption of this proposal for an additional and supplemental method of making nominations for the office of Chairman of the House was moved by Chairman Chauncey B. Wheeler of the House Committee on Rules and Calendar. This was carried and the amendment thereby became effective, ending a long battle by Judge Lawther to obtain an amendment of the method of making nominations for the office of Chairman of the House.

Other Amendments Acted On

Chairman Gay reported that the House had adopted an amendment filed by Messrs. Arthur T. Vanderbilt of New Jersey and William L. Ransom of New York, to amend Article V, Section 3, of the Constitution, so as to make the Director of the Administrative Office of the United States Courts an *ex officio* member of the House of Delegates. On motion of Mr. Wheeler, this action was also concurred in by the Assembly. The incumbent of the office of Director is Mr. Henry P. Chandler, former president of the Chicago Bar Association, who has been active for many years in the American Bar Association.

Chairman Gay reported that—

> The House had voted to lay on the table the proposal to amend Article V, Section 3 of the Constitution so as to make the Past Presidents of the Association *ex officio* members of the House, as contemplated by a proposed amendment which had been filed and published. Mr. Sylvester C. Smith, Jr., of New Jersey, moved that the amendment proposed be laid on the table, and that the Assembly concur in the action of the House. This was carried.

Chairman Gay reported also that the House had voted not to adopt the amendment proposed as to Article VIII, Section 3, of the Constitution, whereby members of the Board of Governors would be chosen by as well as from the various Federal judicial circuits. Again on motion of Mr. Smith, the Assembly concurred in the action of the House.

The House had voted to amend Article I, Section 1, of the By-laws, as to "Committee on Admissions; Nomination of Members," so as to insert therein, after the third sentence, the following new and substituted matter:

> If the applicant is a member of the Bar of the State or Territory in which he resides or has his principal office or is a member of a Federal, State or territorial Court of record of a State or Territory in which he resides or has his principal office, the application shall be referred to the Committee on Admissions for one of such States or Territories. If, however, the applicant is not a member of the Bar of the State or Territory in which he resides or has his principal office, the application shall be referred to the Committee on Admissions for one of those States or Territories or shall be referred to the Committee on Admissions for a State or Territory in which the applicant formerly resided and to the Bar of which he was admitted. Upon the approval of an application by a majority of any such Committee on Admissions, such applicant shall be deemed nominated for membership.

On motion by Mr. Wheeler, this amendment was adopted by the Assembly.

Chairman Gay reported that the House had voted also to amend Article II, Section 5, of the By-laws, as shown by the following:

> The effect of the amendment being to extend the provisions of this By-Law so as to make possible the establishment of joint dues by members of State and local Bar Associations and of this Association who are under thirty-six years of age:
>
> In case any State or local Bar Association shall propose the establishment of a system of joint dues between itself and the American Bar Association, under which all of its members become members of the American Bar Association, as well as of such State or local Bar Association, or under which *any of its members under the age of thirty-six (36) years become members of the American Bar Association, as well as of such State or local Bar Association*, the Board of Governors shall have the power, subject to the approval of the House of Delegates, to agree upon, establish, and put in force such a system of joint dues, *applicable to the members of both associations or to the members of both associations under the age of thirty-six (36) years as the case may be*, determine the total amount of such joint dues, fix the division of the same between the two Associations, and determine the method of billing and collection therefor.

This amendment was adopted, thereby completing the action of the Assembly upon proposed changes in the Constitution and By-laws of the Association. The chair announced that each of the amendments had been carried by more than a two-thirds vote, with more than two hundred members present and voting. This concluded the last formal business session of the Assembly at the 63rd annual meeting.

So much for the active part of the Assembly proceedings. The JOURNAL has devoted twelve pages to this narrative "story" of the Assembly and its work. No one can read this account without being impressed by at least two things:

First, the efficiency with which the Assembly conducts its work in order to accomplish its work and to get through such formidable agenda.

Second, the Assembly is one of the main working parts of the annual meeting, in spite of its rather unwieldy size. Indeed it has proved itself to be one of the cornerstones of the Association.

WALTER P. ARMSTRONG
Re-elected to the Board of Editors of the JOURNAL

Fourth Session—Valley Forge

THE concluding session of the Assembly was held in a picturesque setting, in the open air at Valley Forge. No business remained for transaction. Retiring President Beardsley voiced his appreciation of the help given him during the year. Incoming President Lashly made a vigorous and patriotic statement of his plans and purposes.

THE fourth and final session of the Assembly and the Convention came together under striking and unprecedented circumstances, and the scene will live long in the memory of those present.

On a spacious plain at Valley Forge, within the sight of many historic monuments and landmarks, a number of large tents or marquees had been erected. To these the members of the Convention and their ladies came soon after noon, following the adjournment of the House of Delegates. An appetizing luncheon was quickly served at tables, and then the meeting was called to order in the open air, with expressions of satisfaction that the weather had been so equable and favorable throughout the week.

An address system carried the speakers' voices resonantly throughout the great assemblage. No, there was no business that required transaction; the Assembly and House had been in accord on everything requiring joint action, said Secretary Knight.

As his fourteen months in office came to a close, President Beardsley spoke feelingly of the support and cooperation he had received from Association members, and of his grateful appreciation of the privileges which had been his. Then the sizable rock which he had used as a gavel at this open-air meeting (a gavel having been forgotten) was placed in the hands of incoming President Jacob M. Lashly, as the symbol of succession.

Weintraub

THE PASSING OF THE "GAVEL"

Both men were greeted with long and hearty cheers as they faced the assemblage (and the inevitable photographers). Then President Lashly delivered his "inaugural address", which was received with manifest approbation. It is printed elsewhere in this issue.

With final adjournment, members of the convention visited points of interest in historic Valley Forge, before returning to Philadelphia and leaving for their homes.

Conference of Federal Judges

THE Judicial Conference consisting of the Chief Justice and the Senior Circuit Judges will assemble at Washington, Tuesday, October 1, and is scheduled to continue its session through Saturday, October 12.

The growing importance of the work of that body is evidenced by its agenda, on which appear many subjects of vital importance to the prompt and effective functioning of the Federal judicial system. Much of the work of the new Administrative Office of the Courts of the United States is reported to and acted on by the Conference or is referred to the Supreme Court or other appropriate authority with report and recommendation.

The committee consisting of Judge Knox of New York, Judge Baltzell of Indiana, and Judge James of California, appointed by the Conference in 1938 to prepare and submit local rules for the District Courts of the United States under the authority of Rule 83 of the Federal Rules of Civil Procedure, has completed its work and on September 3 submitted to the Conference its final report and a tentative draft of nine rules recommended to the consideration of the district judges as an aid to the promotion of such a degree of uniformity in form and phraseology as may be possible in view of differing conditions in different districts. The report recognizes and emphasizes the fact that nation-wide uniformity in local district court rules is impossible and undesirable, that where nation-wide uniformity is possible that result should be accomplished through the agency of the Supreme Court aided as heretofore by its Advisory Committee, but it points out that rules on those subjects which cannot be dealt with alike in every district, should be phrased alike in all those districts where conditions make them appropriate, so that uniformity of expression might conduce to uniformity of interpretation. Difference in the form of expression of the same idea by different courts, sometimes give rise to doubt as to the meaning of the variant expressions.

It is also of interest to note that the proposed rules deal only with nine subjects and that in some cases alternative drafts are submitted, to meet different situations.

At the recent annual meeting of the Association it was observed that at the joint sessions of the Judicial Section and of the Conference of State Judicial Councils the conclusions of those sessions on many matters of interest and concern to the bench and bar in the administration of justice, were ordered transmitted with appropriate reports and recommendations to the Judicial Conference or to the Administrative Office or to both of those important agencies of our judicial system.

There is thus disclosed a new avenue of communication between the practitioner, through his national organization, and the judiciary, and between the courts of first instance and those of last resort.

PERSONALITIES AT THE CONVENTION

THE following items clipped from the Philadelphia papers during the sessions of the convention indicate the interest in personalities among the members.

[*Tuesday*]

OLDER than when he was campaigning for the Presidency of the United States as Democratic candidate in 1924, but still as dignified and aristocratic-looking as ever, John W. Davis, of New York, is one of the leading delegates at the convention. Yesterday, a handsome cane added an extra sartorial touch.

* * *

Henry P. Chandler, director of the administration office of the U. S. Courts, took time out from the convention sessions to visit the courts and judges in the new Federal Bldg., 9th and Chestnut Sts. He was escorted through the courtrooms by George Brodbeck, clerk of the U. S. District Courts here.

* * *

Delegate Andrew Hourigan, of Wilkes-Barre, deserted his colleagues temporarily to have lunch with Bishop George L. Leech, of Harrisburg. The Bishop will officiate at the wedding of Hourigan's daughter, Mary Louise. The date hasn't been set yet.

* * *

Three of the most handsome women at the convention are Mrs. Walter Kirkbride, of Toledo, O.; Mrs. Walter Eckert, of Chicago, and Mrs. Cassius Gates, of Seattle. They are wives of lawyers and are asked the inevitable question many times a day, namely: "Are you a woman lawyer or a lawyer's woman?"

* * *

Another lawyer's wife and a very pretty one is Mrs. Howard Cockrill, of Little Rock, Ark. She's 22, blonde, a newlywed and she's been mistaken for a lawyer's daughter. She wore a tan suit with short jacket and flared skirt.

* * *

Where activity is really at a peak is at the golf club desk. The lawyers apparently plan to get in many rounds between sessions. Hundreds of golf bags are in the checkroom. And Ralph S. Croskey, Philadelphia attorney, is kept busy distributing the courtesy cards to the various courses in the area. Most of the visitors seem to want to try Pine Valley, one of the toughest in the world.

* * *

Although sight-seeing tours had been arranged for the Portias, the Portias didn't seem interested yesterday. Reason: There were fashion shows at two of the department stores.

* * *

Michael F. McDonald, of Wilkes-Barre, brought his son, John, along to take in the proceedings. The younger McDonald is waiting for the results of the bar exam he took in June.

* * *

George F. Kachlein, of Seattle, thinks Philadelphia is a much better convention city than San Francisco, where the lawyers gathered last year. "More sociable and more hospitable," he said.

* * *

John K. Cunningham, of Washington, was handing out F. D. R. buttons, but he admitted he was discouraged because he had numerous refusals.

* * *

A clique of glamor boys among the Junior Bar Association is offsetting some of the dignity of the older gentlemen. Some of them went across the river to ride the "hobby horses" Sunday night.

* * *

[*Wednesday*]

Don't take up law. That's the advice offered to young women by Miss Mary Florence Lathrop, 75-year-old Philadelphia-born woman attorney who went to Denver to fight a respiratory ailment and remained there to study and practice law. Miss Lathrop feels that the field for a woman in the law

Top to bottom: Frederic R. Coudert, New York City and William S. Culbertson, Washington, D. C.; Raoul Herrera-Arango, representing Cuban Bar Association; Sylvester C. Smith, Jr., Phillipsburg, New Jersey, and Walter P. Armstrong, Memphis, Tennessee; President Charles A. Beardsley, Mr. Justice Roberts, of the Supreme Court of the United States, and President Thomas S. Gates, of the University of Pennsylvania; Members of the Section of Real Property, Probate and Trust Law conferring with Section Chairman (seated second from left) George E. Beers.

is far narrower than it used to be, and, besides, a woman probably plays her best part in the home. Miss Lathrop is one of the many distinguished lawyers in Philadelphia for the convention of the American Bar Association. She claims two "firsts." She was the first woman to open a law office in the State of Colorado, and she was the first woman to be admitted to the A. B. A. That happened in 1917.

Among the earliest of convention arrivals was John Thomas Vance, law librarian for the Library of Congress. In many hotel rooms faces were long and sad, because he arrived without his guitar. His friends say that at the last convention he brought the guitar, and things were very, very merry indeed.

* * *

Sylvester C. Smith, of Newark, N. J., president of the New Jersey State Bar Association told a large group of lawyers gathered in the Bellevue-Stratford lobby all about legal processes for breaking up rackets. Smith's "convention" was only one of many held as the attorneys gathered to await the real opening sessions today.

* * *

William P. MacCracken, Jr., of Washington, D. C., held forth on aerial warfare and what the U. S. should do about it. He was Assistant Secretary of Commerce under President Hoover.

* * *

Nathan William MacChesney, of Chicago, a former National Guard general, was ever ready and willing to talk about the fine points of the selective draft.

* * *

Charles A. Beardsley, of Oakland, Calif., president of the ABA, unhesitatingly announced that as an expert of naval affairs he is spending much of his time teaching the U. S. Navy defense tactics.

* * *

Perhaps it was the change from soft southern breezes to chilly Philadelphia. Anyhow, John M. Slaton, of Atlanta, former governor of Georgia, arrived in town with a cold, and hustled from the train to see a nose specialist.

* * *

Should auld acquaintances be forgot? The arriving delegates emphatically say no. Especially Urban A. Lavery, managing editor of the ABA Journal and a former football star at the University of Pennsylvania. He had a lot of auld lang syne palaver with Mayor Bob Lamberton and Councilman William (Big Bill) Hollenback, both university classmates of his.

[Thursday]

Attorney General William Walsh, of Maryland, an expert on labor law, has been holding open forum in the Bellevue-Stratford's Hunt Room.

* * *

J. Reuben Clark, second in command of the Mormon Church in America, is going to put aside theology this morning long enough to tell the lawyers a thing or two about life insurance.

* * *

Thirty years ago Robert J. Judd, of Salt Lake City, and Urban A. Lavery, of Chicago, got their diplomas at the University of Chicago, shook hands warmly and promised to keep in touch the rest of their lives. They didn't though. Yesterday at the convention they bumped into each other (literally) in the press room. Recognized each other's voice right away, too.

* * *

Al M. Heck, of San Antonio, Texas, who taught English at Notre Dame while Knute Rockne taught football there, huddled most of the afternoon with members of the Bar's Legal Aid Committee. In town strictly on business, he says, he's getting pointers for his Legal Aid program in San Antonio, which some day he hopes will be the finest in the country.

* * *

That the female of the species is quicker than the male was proved yesterday, when the National Association of Women Lawyers wound up its 41st annual convention, thus giving its members the rest of the week to devote to the ABA. The Portia convention concluded with a reception for the new president, Mrs. Florence Thacker, of Indianapolis. Her first job, Mrs. Thacker said, will be to poll the membership on the subject of uniform marriage and divorce laws.

Top to bottom: Judge James R. Keaton, Oklahoma City, former President Scott M. Loftin, Jacksonville, Fla.; George Harris, Cleveland; Henry P. Chandler, Director of Administrative Office, United States Courts; Laurence W. De Muth (center), newly appointed Adviser to Section of Legal Education, with members of the Section; Grenville Clark, New York City, and Solicitor General Francis Biddle; seated, left to right, Pauline H. Herd, Catherine A. Donahue, Anna Frank Dawson, Ella N. Peterson (standing) Helene Nathanson and Louise M. Rutherford, all Philadelphia women lawyers.

AN AMATEUR AT THE CONVENTION

THE 63rd Annual Meeting of the American Bar Association has come and gone. What can be said of the meeting in a short space, that would interest the average lawyer who did not attend? Let us say the lawyers of Aroostook County, Maine, or of Punxsutawney, Pennsylvania, or of Arapahoe, Nebraska, as well as the lawyers from the great cities. What, in particular, could be considered some of the "high spots" of the sessions? The following comment is written from the point of view of a member who in past years has attended sundry annual meetings but entirely as an onlooker or amateur—and whose active status with the Association is still new.

Lawyers and National Defense

Perhaps the outstanding impression one got from mingling with the lawyers was the seriousness with which the delegates looked out upon the present lawyer's world in America. One heard the comment that the 1941 meeting might be reduced in numbers because a large percentage (perhaps a quarter) of our members might be in the Army or other governmental service in another year. Everyone hoped the contrary, but the effect of such a possibility on the revenues of the Association and on the work of the coming year and the next meeting was appraised in a realistic way. But those thoughts were incidental. The chief idea was: In what ways can the Association and its 32,000 members now be of greater service to the country? It was with this thought in mind that the Assembly and the House resolved to appoint a new and extraordinary committee to be known as the Special Committee on National Defense. It was obvious that this committee is expected to be an agency of great importance in mobilizing the expert and disinterested services of lawyers everywhere, to aid in the program of National Preparedness.

Important Subjects Well Discussed

Anyone who has taken the pains to read with some care and in a fairly exhaustive way the principal papers appearing in the Annual Reports of the Association, from the early years down to say 1920, will think to himself—"There were giants in those days." No lawyer in 1940 can read the major addresses of John F. Dillon, Thomas M. Cooley, James C. Carter, Joseph H. Choate, Elihu Root, and their like, without being stimulated and enriched, and without a real sense of pride in the Association. Looking back over the history of the Association for nearly two-thirds of a century and its methods of work then as compared to the modern Annual Meeting, one realizes that a few of the individual members who were the leaders of the bar in the early days played larger parts upon the stage of the annual meetings than is generally true today. But that is not due to any deterioration in the profession, because we have able and patriotic lawyers among our active spokesmen at the present time, just as truly as at any time in the past. It is due more to the fact that the modern idea of team work, conferences, and actual performance, in the calendared work of the meeting, has very much reduced the occasions for brilliant "plays" by single members of the team. For example a single section of the Association in 1940 often represents more work by the lawyers, and perhaps more useful and worthwhile papers and discussions, than did an entire annual meeting a generation ago. The Insurance Section at Philadelphia was a good example of this fact. Indeed, we find many lawyers now come to the annual conventions primarily to attend the section meetings in which they are particularly interested. The total grist of an annual meeting like that of 1940 is imposing and potent and important. Let the reader imagine that he is on the editorial staff of the JOURNAL and has the job of editing the major addresses of the meeting for publication; he will then realize the significance of the Annual Meeting perhaps more than he otherwise would. If the estimate of one who has attended the 1940 Convention and who has had to follow closely the tremendous volume of its work, is of any value, he would say to the members who were not at the meeting:

"Read the principal addresses; they are worth it. Read also the account of the actions taken by the Assembly and the House, for these will influence future legislation and the opinions of the profession."

Convention Well Organized and Efficient

One of the main impressions made on any one with a substantial experience with convention-work, and public-service work generally, is the high degree of organization and efficiency which the annual meeting has developed. The vigorous stride and effectiveness with which most of the work is carried on is impressive and commendable. This is due in a large measure to the careful advance-planning carried on through the office of the Executive Secretary, plus the efficient working (at the Convention, as well as throughout the year) of the Secretary's office. There are, of necessity, wheels within wheels, in the make-up of the Convention; they are somewhat baffling to the newcomer; but they run smoothly and effectively.

Integral Parts

One of the things which the "amateur" onlooker at the Convention may find somewhat mystifying is the plan and working arrangement of the integral parts of the Annual Meeting; and indeed of the Association itself. The following skeleton framework sketches the various parts of the process and their relation to each other. Each "part" has its own definite domain and jurisdiction, all inter-related.

A. Created by the Constitution and By-Laws

1. *THE ASSEMBLY* [This is the entire body of members registering at the Annual Meeting. Obviously it cannot function at any other time, but can vote its views and give its directions at the meeting.]
2. *THE HOUSE OF DELEGATES* [The House is what may be called the Senate of the Association. It is the representative body which has the "control and administration" of the Association. If the Assembly and House disagree, the members decide by a mail referendum.]
3. *BOARD OF GOVERNORS* [The Board consists of one elected member from each of the 10 Federal Judicial Circuits, plus the President, the retiring President, the Chairman of the House of Delegates, the Secretary, the Treasurer, and the Editor-in-Chief of the ABA JOURNAL. Subject to the House, and between its meetings, the Board is the "administrative board" of the Association, and the agent of the House of Delegates.]
4. *OFFICERS OF THE ASSOCIATION* [These are, a President, a Chairman of the House of Delegates, a Secretary and a Treasurer.

5. *THE JOURNAL AND ITS BOARD OF EDITORS* [This is an autonomous entity within the Association with control over its own financial and business affairs. The Board of Governors and the House have ultimate control through electing its Board.]
6. *SECTIONS* [The Constitution provides for 10 Sections, and regulates the matters of their officers, reports, etc.]
7. *STANDING COMMITTEES*, etc. [The By-Laws provide for 10 "standing" Committees plus a Resolutions Committee and a Reception Committee.]

B. Created by the House of Delegates or Board of Governors, under specific Constitutional authority.

1. *SPECIAL COMMITTEES* [There are 18 of these Special Committees, plus those created at the 1940 meeting.]
2. *BOARD OF ELECTIONS* [Three persons appointed by the Board of Governors as an independent impartial body to supervise and conduct elections, by mail ballots.]

C. Created by House of Delegates, as a part of its procedure, under its general powers.

1. *COMMITTEE ON CREDENTIALS AND ADMISSIONS.*
2. *COMMITTEE ON RULES AND CALENDAR.*
3. *COMMITTEE ON HEARINGS.*
4. *COMMITTEE ON DRAFT.*

D. Created by Board of Governors under its general powers.

1. *COMMITTEE ON ADMINISTRATION.*
2. *BUDGET COMMITTEE.*

The business of the Association throughout the year, as well as the business of the Annual Meeting are both administered by these various agencies, under control of the House. The scheme or plan of organization is ramifying and extensive, but no more so than experience has proved to be necessary. It is, as we have suggested, a well integrated and highly efficient mechanism for carrying on the purposes of the Association.

Philadelphia Hospitality

One heard on every hand at the Annual Meeting that the hospitality provided by the Philadelphia Bar for the members and their ladies was "Tops". The fine programs provided for social entertainment, and the marvelous mass transportation furnished at all times, gave the visitors much pleasure and satisfaction. The visit of more than 2500 members and their ladies to Longwood Gardens, the estate of Mr. and Mrs. Pierre duPont, was a memorable event which long will be a pleasant memory for all who attended. The concert of the Philadelphia Symphony Orchestra was an occasion of a quality which brought commendation from many visitors. The trip to Valley Forge on the last day of the Convention and the final session of the Convention there, in the open meadow where Washington and his troops had spent that fateful winter, was also a dramatic and memorable event.

Annual Dinner

The Annual Dinner was an outstanding occasion. The stirring speech of Mr. Brockington, the representative of the Canadian Bar, the worthy speech of award to Dean Pound, and his genial response, and the felicitious address of our beloved George Wharton Pepper, were particularly happy events. Mr. Brockington's speech was broadcast throughout the United States and Canada, and there were prompt reports by wire and telephone commending its brilliant and patriotic eloquency, and also commending the enthusiastic reception which it produced from the audience. It since has been re-broadcast twice in Canada and once in Great Britain.

The Lure of the Convention

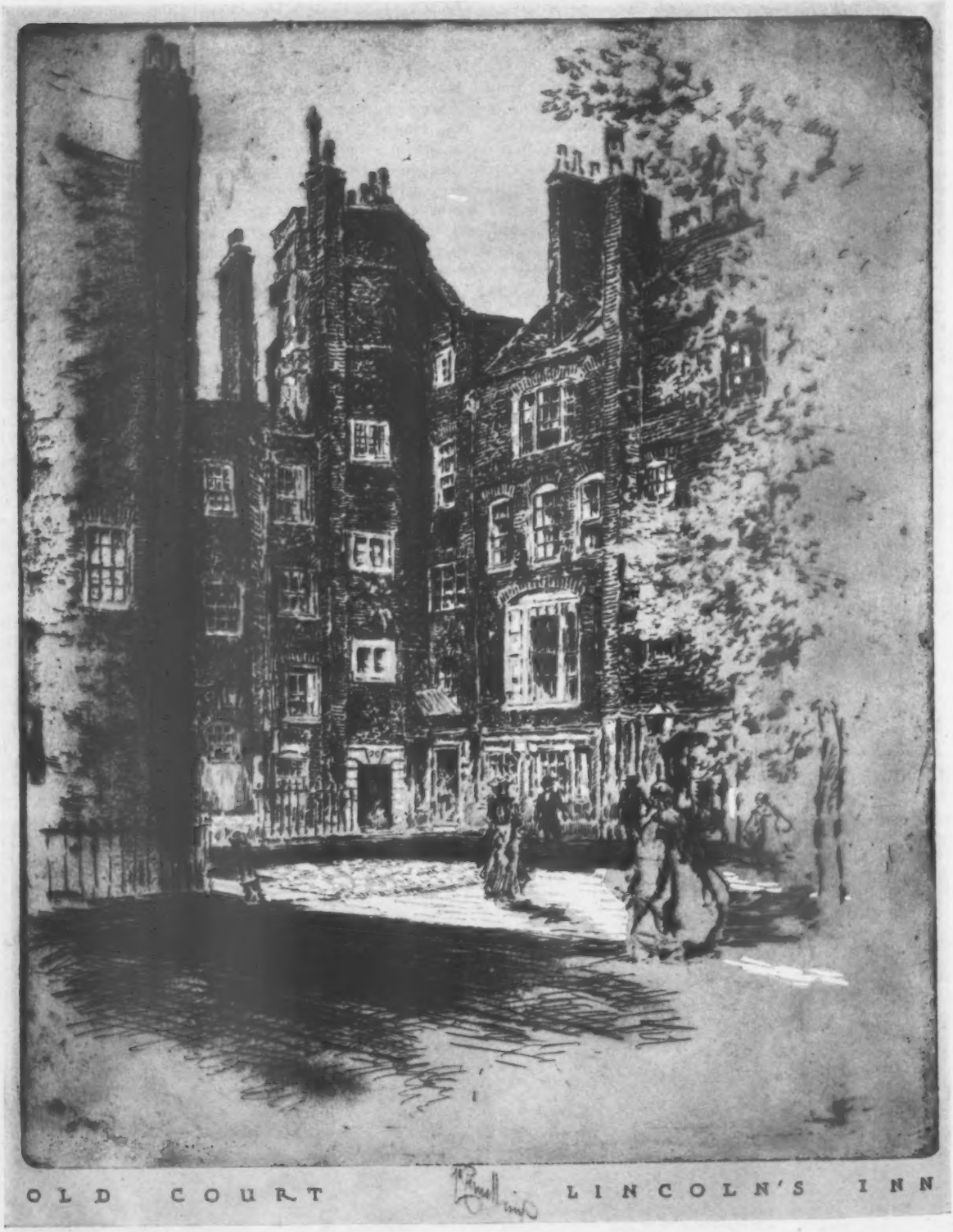
As a final topic of our casual comment it seems fitting to mention what may be called the *LURE OF THE CONVENTION*. By that is meant that an Annual Meeting of the American Bar Association must be experienced to be fully appreciated. There is an attraction about the event that somehow gets into the blood after one or two "exposures" to an Annual Meeting. This is proved by the thrill which newcomers nearly always get out of the Convention. It is further proved by the fact that the old-timers get to be like fire-fans. They just can't miss the fire. And so, as a parting word we feel like saying:

"So long! See you at Indianapolis in September, 1941."

U. A. L.

Weintraub

JAMES GRAFTON ROGERS, DEAN ROSCOE POUND AND LEONARD W. BROCKINGTON, K.C.



From an original etching by Pennell
Owned by Mr. Ernest Ballard of the Chicago Bar
See opposite page

SALUTE TO THE BAR OF ENGLAND

THIS article of the JOURNAL (and also our cover and the adjoining picture) is intended as a gesture of friendship and support to our brothers of the English Bar. In a very real sense the beginnings of American jurisprudence and the heritage of American lawyers are undergoing ordeal by fire and blood, even though the physical aspects of the devastating attack are remote from us. If Westminster Hall is demolished or damaged every American lawyer will feel the blow, as they have felt the havoc even now being wrought on the cherished Inns of Court. For is Westminster Hall not the cradle of the Common Law, even for us in America? Every American lawyer in his first days at law school learned the importance of such things as the Statute of Westminster II. Westminster Hall occupies a prominent place in the fabric of Anglo-American law. There are now around 160,000 American lawyers and about 40,000 law school students. Each of them at this time feels a personal distress because of what is happening to London and to England. In this tragic hour, it is fitting that the lawyers of America should stand at attention and give a SALUTE TO THE ENGLISH BAR.

Those American lawyers who made the memorable trip to England in 1924, and indeed all American lawyers who have visited England and know the hospitality and the stimulation which comes from such a visit, will remember the thrill with which they entered Westminster Hall. They will also remember the satisfaction and the pleasure with which they looked upon the ancient buildings which make up the Inns of Court. But there is another group of American lawyers who, for a special reason, read the war's dispatches from London with choking throats and indignant hearts—those lawyers who served in the American army in France alongside the French and British soldiers in the Great War.

In order that our feelings at this time may have some expression, we here set out a few incidents as a reminder of the ties that bind American lawyers to England. Our cover shows a picture of "The Official Welcome to American Lawyers in Westminster Hall, July 21, 1924." In the JOURNAL for August, 1924 is found a detailed and interesting account of that historic event. We read there that Mr. Justice Sutherland of the United States Supreme Court, in responding for the guests, said among other things:

> Westminster Hall is more than a place; it is more than a name; it is a shrine where English-speaking lawyers the world over may stand with uncovered heads. Here for centuries sat the Great Courts of England. here resounded the voices of her famous lawyers and statesmen, here Bacon was justly condemned and here Hastings was acquitted. It still stands a noble and inspiring monument of that system of laws whose principles were greater than all judges and lawyers, a monument that will live as the common heritage of all who speak the English tongue, long after this structure shall have mingled with the common dust. So fleeting is man, but so lasting are the foundation stones of the Common Law of England.

We read in the same issue of the JOURNAL that on that visit the American Bar presented to the lawyers of England a large memorial statue of Blackstone. That event took place in the Great Hall of the Law Courts, where the statue now is. A fine picture of the unveiling of the statue will be found in that issue of the JOURNAL, showing among other persons Lord Chancellor Haldane, who accepted the gift and Mr. George W. Wickersham, who made the presentation address.

Westminster Hall was originally built in 1199 by William Rufus. It was already old before the City of Berlin was founded in the 13th century. It is the oldest court house in Europe. It is one of the very largest court houses ever built; two hundred and ninety feet long, seventy feet wide, and ninety feet high. It has a magnificent timbered "hammer-beam" roof structure, probably the finest in the world. For six centuries it served as the chief palace of justice of England. In it sat the early English Parliaments. In it the Kings and Queens of England were crowned down to the coronation of George IV in 1820.

Every American lawyer knows of the Inns of Court in an intimate way, although he may not know all of the detailed facts about them. On the opposite page there is given a rare and beautiful etching of one of the finest buildings of the Inns of Court. A word or two about their history will not be out of place. Wigmore in his *Panorama of the World's Legal Systems*, Page 1064, says:

> What made the practice of Law in England possible? A profession of law was already developing in the Inns of Court. These Inns had begun early in the 1300's; they are the guilds of lawyers that grew up around the Courts at London. Only four now survive—Lincoln's Inn, Gray's Inn, Inner Temple and Middle Temple; the last two were so called from occupying the old quarters of the Knights Templars, but there were 14 or more in all at the height of their activity, and there were probably some 2000 members in all each year.
>
> The Inns of Court were guilds of lawyers with their apprentices, because every occupation was in those days organized in a guild. The apprentices of law lodged and ate and studied together in these Inns. They were like the colleges at Oxford and Cambridge and the dormitories and fraternity houses at a modern American University. The Inns of Court became universities of law and they were indeed so called by Chief Justice Fortescue in the late 1400's and by Chief Justice Coke in the 1600's.

The Future

No one can tell at the moment what the history books will say was the result of the present titanic conflict. But we are already sure of one thing; that is what the Future will say about English courage and English spirit. As American lawyers we lift our hats to our Brothers Across the Seas.

A COMPARISON OF THE DOCTRINE OF JUDICIAL PRECEDENT IN AMERICAN LAW AND IN SCOTS LAW

By John C. Gardner*
of the Bar of Scotland

THE doctrine of Judicial Precedent in American Law has been very fully studied and commented upon from various aspects by American lawyers. It may therefore seem presumptuous and superfluous that one who is not well versed in American law should contemplate any further study of this subject. The writer, however, ventures to hope that the disadvantages of ignorance may be compensated by the value of the difference in outlook which results when a lawyer studies the law of some system other than his own, and that the charge of repetition may be refuted by the singular absence of contributions on the part of Scottish lawyers to the study of the doctrine of *stare decisis*. Further, it does not appear that any of the previous comparative studies of this doctrine in American law contain a comparison with the law of Scotland.

In a short article in 1895, on Judicial Precedents,[1] Professor J. C. Gray has a few paragraphs on the doctrine of *stare decisis* in Scots Law. These consist almost entirely of quotations from Erskine's Institutes and Principles. Professor Gray very briefly assigns to judicial precedents in Scotland at that time a position intermediate between that occupied by them on the continent of Europe and that to which they are raised in England, but there is no comparison with the doctrine in American Law. The latter is described as being substantially the same as in England. This is qualified by adding, that the character of the people and of institutions make the weight attached to judicial precedent somewhat less than in England. Somewhat surprisingly, Gray says[2] the difference will hardly admit of any precise definition, and that it does not seem worth while to attempt it. He instances only the difference from the rule that the House of Lords will not overrule its own decisions. The highest courts of the respective states, as well as the Supreme Court of the United States, all consider they have the power to depart from their former rulings, whether or not they are agreed on the expediency of so doing. The same rule as to the duty of a lower court to follow a precedent established by a higher court prevails in America as it does in England.

It appears, however, from later writers, that the doctrine of *stare decisis* in American Law is in every way a more flexible doctrine than in English Law and that it is to some extent regarded in a different light[3].

In contrasting this with Gray's article, it must be remembered that the American doctrine has developed and changed since the date of the article.

The Doctrine of Stare Decisis in American Law

American Law does not accept the doctrine of judicial precedents unquestionably. It is realized that: "Back of precedents are the basic juridical conceptions which are the postulates of judicial reasoning and further back are the habits of life, the institutions of society in which those conceptions had their origin, and which, by a process of interaction, they have modified in their turn. None the less, 'observes the author[4] of this passage,' in a system so highly developed as our own, precedents have so covered the ground that they fix the point of departure from which the labor of the judge begins. Almost invariably his first step is to examine and compare them. If they are plain and to the point, there may be need of nothing more. *Stare decisis* is at least the everyday working rule of our law."

It appears, however, that in America the decision is not accepted or should not be accepted by itself, as in England. The judge should first ascertain the underlying principle or *ratio decidendi* of the decision[5] and follow the latter only if he is satisfied that the principles on which the case was decided is sound, and applicable to his own case. In Scotland, as in England, it is the decision itself which is the criterion for the judge in cases where any court is bound by the judgment of another court, but in Scotland, if it is quite clear what the *ratio decidendi* was, which led to the desion, then that *ratio decidendi* is also binding[6]. The doctrine of *stare decisis* in England is less concerned with the *ratio decidendi* of a decision. The mere existence of a previous decision by a superior court is sufficient for any inferior court.

American law, while also recognizing that a sentiment like in kind, though different in degree is at the root of the tendency of precedent to extend itself along the lines of logical development, considers it has been less influenced in this sentiment by that passion for *elegantia juris* than the Roman lawyers and their followers[7].

It appears that although the rigidity with which the rule of adherence to precedents is applied in America has always been, and is becoming increasingly, less than in England, the true aspect in which that rule is regarded by American lawyers is liable to be misunderstood. Cardozo comments[8] on a paper[9] by Sir Frederick Pollock, written more than forty years ago, in which the latter suggested that the freedom with which the United States Supreme Court and the highest

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1. 9 Harv. L. Rev., No. 1.
2. *Op. Cit.*
3. See Cardozo—The Nature of the Judicial Process 158 (Oxford University Press) and von Moschzisker—*Stare Decisis in Courts of Last Resort*—37 Harv. L. Rev. p. 414, 415.
4. Cardozo, *op. cit. Introduction* 19, 20.
5. *Ibid.* p. 28.
6. Article on *Law* by Sheriff Black, 9 Green's Encyclopaedia of the Laws of Scotland (1930).
7. Cardozo *op. cit. cf.* Gény, Methode d' Interpretation et Sources en droit privé positif, Vol. II. p. 119.
8. *Op. Cit.* p. 158.
9. The Science of Case Law, in Essays in Jurisprudence and Ethics, p. 245.

courts of the several states overruled their own prior decisions, seemed to indicate that the law in America was nothing more than a matter of individual opinion. While admitting that since Sir Frederick Pollock's observation, this tendency to reverse prior decisions has, if anything, increased and while instancing the case of *Johnson v. Cadillac Motor Co.*[10] as an extreme illustration, Cardozo considers[11] that the true attitude of the American courts towards the reversal of prior decisions has been more accurately defined by President Roosevelt in the following passage:[12] "The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority. Every time they interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy; and as such interpretation is fundamental, they give direction to all lawmaking. The decisions of the courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold to a twentieth century economic and social philosophy, and not to a long outgrown philosophy, which was itself, the product of primitive economic conditions."

Another American writer, dealing with what he calls the much abused term of "making law," says[13] that in America, the unwritten law proceeds not from the will of the judge as a lawmaker, but from society speaking through him. He states that this is a very old doctrine of the common law which modern speculation has not really improved upon.

He describes the doctrine of *stare decisis* in American law[14] as dictating that decisions formally reduced to judgment shall thereafter be followed as precedents; "that is to say, the law of such decisions,—even though thought to be wrong in principle or to have been incorrectly applied—shall not be departed from in subsequent cases where a departure is apt to do more harm than would occur, should the decision be allowed to stand until the legislature might see fit to change the rules of conduct there laid down or acted upon. But if, after thorough examination and deep thought, a prior judicial decision seems wrong in principle or manifestly out of accord with modern conditions of life, it should not be followed as a controlling precedent, where departure therefrom can be made without unduly affecting contract rights or other interests calling for consideration."

It is considered in America,[15] that "maximum good and minimum harm is the chief mission of *stare decisis*, although those who fail to understand what the doctrine seeks to accomplish mistakenly believe it based on the premise that certainty in law is preferable to reason and correct legal principles.[16] If the rule demanded absolutely rigid adherence to precedents (as in the English House of Lords),[17] then there might be good ground for the persistence among the uninformed of the erroneous idea just referred to, but the proper American conception comprehends *stare decisis* as a flexible doctrine, under which the degree of control to be allowed a prior judicial determination depends largely on the nature of the question at issue, the circumstances attending its decision, and, perhaps, somewhat on the attitude of individual participating judges. An equal division of opinion in the court rendering the decision obviously weakens it as an authority; when there is a non-concurring minority, the force of a decision cited as a precedent might be affected by the persuasiveness of the dissenting opinions; and, again, the decision in an *ex parte* proceeding does not supply a precedent with the strength of one argued *pro* and *con* and carefully considered by the judges from the opposing views presented."

In cases relating to the status of property or dealing with the title to real estate, American law strictly observes the doctrine of *stare decisis*. This also applies to decisions establishing rules of trade or contract, but when decisions do not fall into any of these categories and the court decides, after careful consideration in a subsequent case, that its earlier views were wrong or that its rulings have become inapplicable through lapse of time and change of conditions, it should not hesitate to declare so if the administration of justice in the case before it should necessitate such a step.[18]

In the sphere of criminal law, it is generally held that the doctrine of *stare decisis* must be rigidly applied, to prevent judicial changes which might operate to prejudice materially the rights of an accused.[19] But in cases dealing with questions of judicially-established rules of evidence or procedure there is much less reluctance in departing from a previous decision, especially if there is a strong reason for doing so, or where the arguments against the change are technical rather than substantial.[20] On the other hand, when interpreting codes of procedure or statutory remedies, the American courts are properly reluctant to depart from constructions of long standing.[21]

In American Law, when the court departs from the ruling in a previous decision, von Moschzisker says[22] that the prevailing doctrine is "not that the law is changed (by the overruling opinion), but that the court was mistaken in its former decision, and that the law is and really (always) was, as expounded in the later decision.[23] Apparently, however, this doctrine in the case of a decision interpreting a statute. also a well established exception to this prevailing doctrine in the case of a decision interpreting a Statute. "After a statute has been settled by judicial construction, the construction becomes, *so far as contract rights* are concerned, as much a part of the statute as the

10. 261 Fed. 878.
11. *Op. Cit.* 170.
12. *Message of December 8, 1908 to the Congress of the United States.* (43 Congressional Record, part I, 21.)
13. Von Moschzisker, *Stare Decisis in Courts of Last Resort*, 4 HARV. L. REV. (1924), 413.
14. *Op. Cit.* 413-415.
15. *Op. Cit.* p. 414.
16. *See* 34 HARV. L. REV. 74.
17. Beamish v. Beamish 9 H. L. Cas. 274 (1859) · London Street Tramways Co. v. London County Council (1898), A. C. 375, 379.
18. Foster v. Roberts, 142 Tenn. 350, 219 S. W. 729 (1920); Harvey v. Missouri Athletic Club, 261 Mo. 576, 170 S. W. 904 (1914).
19. R. Von Moschzisker *op. cit.* p. 418.
20. Falconer v. Simmons, 51 W. Va. 172, 179, 41 S. E. 193, 197 (1902).
21. Pouch v. Prudential Ins. Co., 204 N. Y. 281, 97 N. E. 731 (1912); Regan v. Dickmann, 207 S. W. 792 (M. O., 1918).
22. *Op. Cit.* p. 422.
23. Ray v. West Penna. Natural Gas Co.; 138 Pa. St. 576, 590, 20 Atl. 1065, 1066 (1891): Falconer v. Simmons 51 W. Va. 172, 180, 41 S. E. 193, 197 (1902), and authorities there cited: Ross v. Board of Freeholders, 90 N. J. L. 522, 102 Atl. 397 (1917): Landers v. Tracy, 171 Ky. 657, 188 S. W. 763 (1916).
24. See GRAY, THE NATURE AND SOURCES OF THE LAW, 219-222, 235, 236. See also Holmes, J., dissenting in Kulm v. Fairmount Coal Co., 215 U. S. 349, 370, 371 (1910).

text itself, and a change of decision is to all intents and purposes the same (and only the same) in its effect on contracts as an amendment of the law by means of a legislative enactment."[25]

Dealing with the application of the doctrine of *stare decisis* in constitutional cases, von Moschzisker says:[26] "There is much to be said in favor of the view that, in constitutional cases, the doctrine of *stare decisis* should not apply with undue severity.[27] The general precept has already been stated that, in determining the degree of force, the rule shall be given in any particular case, a primary consideration—particularly whether it is of a kind on the faith of which, in all probability, public institutions or rules of trade have been founded, property acquired, or contracts made. In addition to that consideration another influence on the judicial mind may be exerted in constitutional cases by the very fact that the organic law itself is at issue. There, the need for certainty in the meaning of the constitution might dictate strict adherence to prior interpretations,[28] but, it may well be urged, this consideration is outweighed by the demand that, if original error has been committed, a failure to protect basic rights ought not to be perpetuated through allegiance to precedence where, as in constitutional cases, the instrument interpreted and the constructions placed thereon, are not subject to legislative amendment. Moreover, the constitution consists of general rules which, though of permanent operation, are of varying significance from generation to generation, and it can only exist as a living organism by being read in the light of new conditions. Prior constructions, made at times when perhaps these new conditions were not foreseen or considered, should not unduly tie up the future if, in the light of material changes in the life of the people, they are seen to be erroneous."

It appears that the question of whether the doctrine of *stare decisis* should apply in constitutional cases forms a very contentious problem in American law.[29] In theory, the usual tendency seems to be to regard the Constitution as unalterable by decisions of the courts and for that reason, the courts do not declare any legislation unconstitutional. They treat that legislation as if it did not exist and decline to enforce it as of no validity.[30] In practice, however, it is stated[31] that American lawyers are almost unanimous in upholding the superior sanctity of decisions even to the Constitution itself. "It is but seldom that we hear a decisive voice against the application of the rule of *stare decisis* to constitutional cases. Ordinarily, even those, who doubt the accepted practice, limit themselves to vague statements that the rule in constitutional questions should be different from that applied in ordinary cases. Should we ask for further specifications and for a test as to when the rule ought to be applied to constitutional questions and when it ought not to be, we should find that these middle-of-the-roaders put forward tests which ultimately reduce themselves to a question of *policy*, which is the very basis of the rule itself, no matter to what class of case it is applied. For the rest, the dissenters limit themselves to the expression of doubts."[32]

The conflicting opinions regarding the application of *stare decisis* in constitutional cases in America are somewhat reminiscent of the theoretical inconsistence of the French *jurisprudence* to the terms of the code, although the exact point at issue is not the same. An American writer mentions[33] that the common law system of precedent has frequently been contrasted with the civil law doctrine of precedents. He exemplifies[34] the civilian system in the following statement of the French practice: "In France, judicial precedent does not, *ipso facto*, bind either the tribunal which established it, or the lower courts; and the court of Cassation itself retains the right to go back on its own decisions. The Courts of Appeal may oppose a doctrine proclaimed by the Court of Cassation and this opposition has sometimes led to a change of opinion on the part of the higher court. The practice of the courts does not become a source of the law until it is definitely fixed by the repetition of precedents which are in agreement on a single point.[35] Although the doctrines of *jurisprudence constante* in the civil law and *stare decisis* in the common law are comparable and look very much alike, it has been stated that "the difference between them is such that it is one of the chief things which distinguishes the two great systems of law. The civil law begins with the principle that precedents are not binding, then it makes exceptions where the matter is *jurisprudence constante* (well established by a line of cases—not merely one or two precedents). Obviously, if the exceptions were very numerous, the system would approximate that in which the common law finds itself under the rule of *stare decisis*."[36] In modern French law there is now a very considerable body of *jurisprudence constante*, or case law, which is observed in practice, although it seems theoretically opposed to the intention of the code.

While there is apparently[37] sufficient consistency in the ruling decisions of the American Supreme Court in Constitutional issues to have built up a Federal Common Law of the Constitution, it is yet contended that *stare decisis* must not in such cases be anything more than a desirable policy. Mr. Justice Brandeis giving a dissenting judgment in a quite recent case[38] expressed the matter thus: *"Stare decisis* is not, like the rule of *res judicata*, a universal, inexorable command . . . *stare decisis* is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. This is commonly true, even where the error is a matter of serious concern, provided that correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is

25. Douglas v. County of Pike, 101 U. S. 677, 687 (1879). See also Thompson v. Henry, 153 Ind. 56, 54 N. E. 109 (1899); Ray v. Natural Gas Co. *supra*.

26. *Op. Cit.* p. 420.

27. See Mountain Grove Bank v. Douglas County, 146 M. O. 42, 53, 54, 47 S. W. 944, 946, 947 (1898). See also WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES, 52.

28. See United States v. Moreland, 258 U. S. 433, 438 (1921). See also COOLEY, CONSTITUTIONAL LIMITATIONS, 79-89.

29. See Louis B. Boudin, *The Problem of Stare Decisis in our Constitutional Theory*—N. Y. U. L. Q. REV. Vol. VIII, No. 4.

30. Boudin *Op. Cit.* p. 593.

31. *Ibid.* p. 596.

32. *Op. Cit.* p. 597 and see WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 470, 471.

33. Kocourek, *Renovation of the Common Law Through Stare Decisis*, 24 ILL. L. REV. 984.

34. *Op. Cit.* p. 984.

35. Lambert—*The Case Method in Canada and the Possibilities of its Adaptation to the Civil Law* (1929) 39 YALE L. J. 1, 14.

36. Henry, *Jurisprudence Constante and Stare Decisis Contrasted* 1929 15 A. B. A. J. 11. See also Borchard: *Some Lessons from the Civil Law* (1916) 64 U. OF PA. L. REV. 570

37. SIR MAURICE S. AMOS, LECTURES ON THE AMERICAN CONSTITUTION (1938), Longmans, Green & Co.

38. Burnet v. Coronado Oil & Gas Company (1931).

practically impossible, the court has often overruled its earlier decisions. The court bows to the lessons of experience and to the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function."

Professor Kocourek considers[39] that the most approved statement of the doctrine of *stare decisis* for the United States is that of Chancellor Kent,[40] who says: "A solemn decision, on a point of law arising in any given case becomes on authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case."[41]

Dealing with the development of the *stare decisis* doctrine in the United States, Professor Kocourek says[42] that, on the whole, it approximated that of the English up to the twentieth century.[43] "But beginning with the twentieth century, a decided difference in the attitude of the courts toward the maximum is apparent. This attitude may be attributed to the fact that the courts gradually took cognizance of what Dean Pound characterizes the 'socialization of the law.'[44] *The modern and present trend is characterized by the overruling and distinguishing of precedents to an extent that would strike an English judge and lawyer as revolutionary.* The history of a precedent established in the case of *City of Wheeling v. Campbell*,[45] well illustrates the development of the doctrine of precedent in America. In *Forsyth v. City of Wheeling*,[46] the question arose again and the court simply said: 'I consider the case of *City of Wheeling v. Campbell* as conclusive of the case! In *Texas v. City of St. Albans*,[47] the identical question was again presented and the court, in answer to a contention that the question should be decided differently, said, without considering the merits of the contention: 'It is settled otherwise in this state.' However, at the beginning of the period of 'socialization of the law,' the question arose once more in *Ralston v. Town of Weston*,[48] and the court, perhaps conscious of the new trend, reversed the precedent it had strictly adhered to previously."

Professor Kocourek remarks[49] that the state courts have no doubt followed the lead of the United States Supreme Court, which has never held itself to be absolutely bound by its own decisions.[50] He says[51] that "the departures by the courts from the English doctrine of the inviolability of precedent" have been justified in different ways in the form of what might be termed exceptions to the rule of *stare decisis*. These are instanced[52] as follows:—

(1) Some courts while admitting that the doctrine is to be applied generally, justify their departure from it when "a change of conditions warrants a change of the rule."[53]. In the case of *In re Hood River*,[54] the court in overruling a prior case, stated: "The very essence of the common law is flexibility and adaptability. It is one of the established principles of the common law which has been carried along with its growth, that precedent must yield to the reason of modified conditions."

(2) Many courts formulate a further exception on the basis of the expansibility of the common law.[55] In *Oppenheim v. Kridel*[56] the court justifies this deviation by stating: "The common law is not a compendium of mechanical rules written in fixed and indelible characters, but a living organism which grows and moves in response to the larger and fuller development of the nation."

(3) Other courts, in order to escape the rule of *stare decisis*, announce that the law consists not of rules enforced by decisions of the courts, but only of the principles from which these rules flow.[57] In *Indiana Creek Coal Co. v. Calvert*,[58] Dansman, J., dissenting states that: "The rule (*stare decisis*) is applicable only where a principle of law is involved. As a necessary corollary to the rule of *stare decisis*, the courts have long recognized the beneficent principle that when dealing with evidence the human mind should not be fettered by so-called precedents."

(4) The most convenient device used to avoid constraint of the "rule of precedent" is the practice of distinguishing cases which are frequently undistinguishable and which inevitably results in confusion and uncertainty in the law.[59]

(5) Still another convenient formula used to justify departing from *stare decisis* is the maxim *cessante ratione legis cessat ipsa lex*.[60] In *Adams Express Co. v. Beckwith*,[61] the court justifies itself in overruling a prior precedent through the application of this maxim, stating: "A decided case is worth as much as it weighs in reason and righteousness and no more. It is not enough to say, 'thus saith the court.' It must prove its right to control in any given situation by the degree in which it supports the rights of a party violated and serves the cause of justice as to all parties concerned."

Chamberlain's definition of the American doctrine of

39. *Op. Cit.* p. 975.
40. Blydenburgh *Stare Decisis* (1918), 86 CENT. L. J. 388.
41. 1 KENT COMMENTARIES 475.
42. *Op. Cit.* p. 976.
43. Goodhart, *Case Law in English and American Law* (1930), 15 CORN. L. Q. 173.
44. POUND, THE SPIRIT OF THE COMMON LAW (1921), pp. 185-189. For other special tendencies see Hardman, *Stare Decisis and the Modern Trend* (1926); 32 W. VA. L. Q. 163.
45. 12 W. Va. 36 (1877).
46. 19 W. Va. 318 (1882).
47. 38 W. Va. 1, 17 S. E. 400 (1893).
48. 46 W. Va. 544, 33 S. E. 326 (1899).
49. *Op. Cit.* p. 976.
50. Washington v. Dawson & Co., 264 U. S. 219, 238, 44 S. Ct. 302, 309 (1924).
51. *Op. Cit.* p. 977.
52. *Op. Cit.* pp. 977-979.
53. Diamond Match Co. v. Roeber, 106 N. Y. 473, 13 N. E. 419 (1887); *In re* Hood River, 114 Ore. 112, 227 Pac. 1065 (1924); Parish v. Schwartz, 344 Ill. 563, 176 N. E. 757 (1931) People v. Connell, 257 N. Y. 73, 177 N. E. 313 (1931).
54. *Ibid* at 1086.
55. Dwy. v. Connecticut, 89 Conn. 74, 92 Atl. 883 (1915) Oppenheim v. Kridel, 236 N. Y. 156, 165, 140 N. E. 227 (1923); Rosen v. United States, 245 U. S. 467, 38 S. Ct. 148, 150 (1918); Funk v. United States, 290 U. S. 371, 54 S. Ct. 212 (1933).
56. *Ibid.*
57. Ketelson v. Stilz, 184 Ind. 702, 111 N. E. 423 (1916) Blydenburgh supra p. 14 Note 4; Indiana Creek Coal Co. v. Calvert, 68 Ind. 474, 119 N. E. 519 (1918); 15 C. J. 916.
58. *Ibid.*
59. Atkins v. Grey Eagle Coal Co., 76 W. Va. 27, 84 S. E. 906 (1905); United Mine Workers of America v. Coronado Coal Co., 259 U. S. 344, 42 S. Ct. 570 (1922); Comment (1924) 33 Yale L. J. 315; Home Building & Loan Ass'n. v. Blaisdell, 290 U. S. 600, 54 S. Ct. 231 (1934).
60. Leavett v. Blatchford, 17 N. Y. 521 (1858); Adams Express Co. v. Beckwith, 100 Ohio 348, 126 N. E. 300 (1919); Harris v. McKay, 138 Va. 448, 122 S. E. 127 (1924); City of Cincinnati v. Taft, 63 Ohio 141, 58 N. E. 63 (1900); City of Milwaukee v. Milwaukee R. R. Co., 173 Wis. 400, 180 N. W. 339 (1920); People v. Tavormina, 257 N. Y. 84, 177 N. E. 317 (1931); Funk v. United States, supra p. 17 Note 4.
61. *Ibid* Note 1.

stare decisis is said[62] to illustrate, as well as any, the exceptions and departures which characterize it. He says: "A deliberate or solemn decision of a court or judge made after argument on a question of law fairly arising in a case and necessary to its determination, is an authority or binding precedent in the same court or in other courts of equal or lower rank in subsequent cases where the 'very point' is again in controversy; but the degree of authority belonging to such a precedent depends, of necessity, on its agreement with the spirit of the times or the judgment of subsequent tribunals upon its correctness as a settlement of the existing or actual law, and the compulsion or exigency of the doctrine is in the last analysis, moral and intellectual, rather than arbitrary or inflexible."[63] The American doctrine does not regard dicta in an opinion as having any binding authority.[64]

It might be suggested that the wide field of judicial organization which is left to be regulated by Congressional legislation has had an influence in the American attitude to the doctrine of *stare decisis*. It is left to Congress to decide the number and emoluments of the judges of the Supreme Court, the numbers and organization of the inferior courts, and the system of appeals. As the law stands at present, the Supreme Court is composed of a Chief Justice and eight associate justices. The Federal Courts, subordinate to the Supreme Court, consist of ten circuit courts of appeal and of forty-eight district courts corresponding to the forty-eight district states.[65] The tendency of modern legislation has been to relieve the pressure upon the Supreme Court by confining its appellate jurisdiction, so far as the constitution permits to cases involving constitutional questions.[66]

At the same time, the following passage, stating that the doctrine of *stare decisis* has arisen in American law as a rule of necessity, might be equally applicable to English law: "Under the common law system—lacking as it does a scientifically constructed code as a basis, or indeed, any code in a true sense, we are *ex necessitate* more dependent on the influence of previous decisions. If we strip these of all mandatory force, our unwritten law would be evidenced by no authoritative declaration, and every court from the lowest to the highest would be a law unto itself. The rule of *stare decisis* is therefore, a rule of necessity and a natural evolution from the very nature of our institutions."[67] As in England, uniformity of treatment of litigants, convenience, stability and certainty in the law are regarded[68] as the recognized purposes and results of *stare decisis*.

A recent note in the Columbia Law Review, entitled "Law of the case,"[69] illustrates the difficulty in formulating any definite rules for the operation of the doctrine of judicial precedent in American law. This difficulty is easily appreciated when one remembers the enormous body of case law in existence in America. A special point of interest in the note referred to is that by Statute in Alabama the highest court must ignore the law of the case established on a previous appeal whenever it conflicts with the present opinion of the court as to what the case is.[70]

It is hoped that the foregoing brief and somewhat haphazard resumé may give some idea of the doctrine of judicial precedent in American law. No pretence has been made to present a complete and orderly summary of this doctrine. The main purpose has been to attempt to show that while *stare decisis* is as much an integral part of American law as it is of English law, the doctrine in America is a very much more elastic and flexible one than in England. How then does the American doctrine compare with *stare decisis* in Scots law—a system which is a compromise between the Anglo-American system and the Continental system of the codes?

The Doctrine of Stare Decisis in Scots Law

The writer has commented elsewhere[71] on the difficulty in ascertaining the early history and development of the doctrine of *stare decisis* in Scots law. In England, the development of this doctrine has been traced[72] from the earliest times of English legal institutions, but in Scotland it is not until about the middle of the eighteenth century that something like recognition of judicial precedent can be clearly discerned. At that time Mackenzie and Stair, two of the earliest Sottish institutional writers both regarded a uniform tract of decisions as making law by establishing a custom, and as very strongly, although not completely, binding on future decisions.[73] There is no definite acceptance yet of the doctrine of *stare decisis*. The binding nature of a series of concordant decisions seems to be attributed rather to a judicial custom having been thus established, than to any clear recognition of obligation to follow judicial precedent, and, while stating that it was the practice to follow such a series of decisions, a theoretical independence of the courts was still declared. Lord Stair particularly distinguishes between "a custom by frequent decisions and a single decision which hath not the like force."[74] Coming in between Mackenzie and Stair, Bankton, while not numbering[75] judicial decisions among the sources of the old law of Scotland indicates[76] that the doctrine of judicial precedents in Scotland was then (i. e., about the middle of

62. Kocourek *Op. Cit.* p. 979.
63. Chamberlain, *Stare Decisis*, 19.
64. "The doctrine of *stare decisis* contemplates only such points as are actually involved and determined in a case. Anything said by the court or judge outside of the record or on points not necessarily involved therein, is classified as dicta." 7 R.C.L. 1004. Cohens v. Virginia, 6 Wheat. 264, 399 (1821); People v. Winkler, 9 Cal. 234 (1858); Pollock v. Farmers Loan & Trust Co. 158 U. S. 601, 15 S. Ct. 912 (1895); First National Bank v. Union Trust Co. 158 Mich. 94, 122 N.W. 543 (1909); State v. Nashville Baseball Club, 127, Tenn. 292, 154 S.W. 1151 (1913).
65. SIR MAURICE S. AMOS: LECTURES ON THE AMERICAN CONSTITUTION *supra*. 32.
66. The Judicial Code, particularly Sections 344 to 347; "The Business of the Supreme Court," (1928), Frankfurter and Landis.
67. Lile, *Views on the Rule of Stare Decisis*, (1916), 4 VA. L. REV. 95.
68. CARDOZO, NATURE OF THE JUDICIAL PROCESS, (1921); MCLEOD, THE VALUE OF PRECEDENTS, (1894) 28 AM. L. REV. 218; JONES, ESSAYS ON BAILMENTS, (1807); VON MOSCHZISKER, *Stare Decisis in Courts of Last Resort*, (1924) 37 HARV. L. REV. 409, 410.
69. *Op. Cit.* (1940), Vol. XL. No. 2, p. 268.
70. Ala. Code (1927), Sec. 10287.
71. GARDNER, JUDICIAL PRECEDENT IN SCOTS LAW, (1936), W. Green & Son, Ltd., Edinburgh.
72. *Dr. Ellis Lewis. The History of Judicial Precedent*, L.Q.R. *Vol. XLVII.*
73. Mackenzie, Institutions I. 1.10; Stair, Institution I. 1, 16.
74. *Ibid.*
75. Institutes, Book I, Tit. I.
76. *Ibid*, p. 41.

the 18th century), very much the same as in England. This view is at variance with that of other legal writers of the period and expresses a position of matters which does not appear to have existed before the end of the following century. It must, of course, be kept in mind that when Bankton wrote, the doctrine of *stare decisis* in England, was not fully developed and much less binding than it is today.

Erskine, writing about the beginning of the nineteenth century, admits somewhat guardedly the declaratory theory that judicial decisions are only of authority as proof of customary law.[77] He does not consider that even a series of concordant decisions is absolutely binding, "because the tacit consent on which unwritten law is founded, cannot be inferred from the judicial proceedings of any court of law, however distinguished by dignity or character: and judgments ought not to be pronounced by examples or precedents."[78] Erskine is much more sweeping in his application of this Roman law maxim of *non exemplis sed legibus judicandum est* than Bankton, who applies it only to decisions dealing with the interpretation of Statutes.[79] The latter also qualifies this application by saying that "former precedents as to the interpretation of a statute where the sense is doubtful must have weight with the judges in the subsequent decisions thereon that the law may not be uncertain."[80] Erskine states that, (at his time), decisions of the House of Lords are not binding either on that Court or on the inferior courts in Scotland, although such decisions should have the strongest influence on the determinations of the inferior Scottish Courts.[81]

Baron Hume, in his Lectures 1786-1822,[82] describes the delineations of doctrine given by learned and eminent legal writers, when in accord, as being of little inferior authority to the judgments of court.[83] This, while illustrating the high authority which has always been accorded in Scots law to the views expressed by eminent legal writers, does seem to assign to them an authority inferior to that of judicial decisions—a view not by any means universally accepted at that time.

The following passage from Hume is also of interest: "The authority of precedents as a part of our law certainly is not established, but as former decisions express the opinion of men best versant in the subject they ought to have much weight. To open them up except upon the strongest grounds is dangerous, as it gives scope for the influx of new opinions. A judge on this account will often decide according to precedents in preference to his own opinion, though he will not be guilty of a breach of duty if he swerve from them."[84] It is observed in a footnote[85] to this passage that Hume does not distinguish a uniform tract of decisions and a single decision, but that he seems to treat precedent as something more than merely proof of customary law, which Erskine did.

One writer about the end of the 19th century, makes the following observation about judicial precedent in Scots law: "Scotland," he says, "in fact occupied an intermediate position between those parts of the Continent where the Roman law was entirely accepted, and there was therefore less need to apply general principles to particular cases by decision, and England, where that law was almost entirely rejected, and a new common law had to be developed by judicial opinions and judgments."[86]

During the 19th century, the authority of the decided case in Scots law was gradually increasing and the doctrine of judicial precedent being increasingly accepted. The greater number of decided cases, the improvement in reporting, and the influence of the English doctrine of *stare decisis* would all form factors contributing to this development.

In 1901, the following interesting difference of opinion was expressed as to the extent to which Scots law had by then become a system of case law: In a paper on "The Relationship of the Law of France to the Law of Scotland,"[87] read to the International Law Association at the conference in Glasgow in August, 1901, Dr. F. P. Walton contended that since the Union of the Crowns, "the authority of decided cases had become so much greater (in Scotland) than that of text writers, that Scots law had long ceased to be a system of civil law in the same sense as the law of France, Germany or Italy, and that it was first and foremost a system of case law." Lord Dunedin (then the Right Honourable A. Graham Murray, Lord Advocate), in expressing appreciation of Dr. Walton's paper, took exception to Scots Law being described as a system of case law, and maintained that, in contradistinction to English law, it was certainly not a system of case law. He considered that the natural tendency of the Scots lawyer was to argue rather on principle than on precedent, and that the institutional writers in Scotland are treated as part and parcel of our law in a way that such writers are not treated in almost any other system.

It may be suggested that if these two apparently opposing views could be combined, a more accurate conception would be given. By 1901, Scotland had become to a great extent a system of case law, particularly in comparison with the codified continental systems. The authority of the institutional writers was, however, then still considerable, and as judicial precedents were not nearly so numerous as they are today, greater scope would exist for the quoting of text writers as authorities to the courts. Scots law was never so completely a system of case law as English law, and even today, when it can be said that the doctrine of *stare decisis* is accepted in Scots law very much to the same extent as in English law, Scots lawyers still retain remnants of their former predilection for principles rather than precedents. Whether this is due to the Scottish characteristics being stronger than the traditional conservatism of the law, or to the thoroughness of the impregnation of Scots law with Roman law, is an interesting speculation. For a long period, Roman law, particularly as propounded by the great Dutch civilians, was cited to, and accepted by the Scottish courts as being

77. Institute I. 1, 47.
78. *Ibid.*
79. Institutes, Book I. Tit. 1, p. 41.
80. Institutes, Book I, Tit. 1, p. 41.
81. Institute I. 1. 47.
82. Vol. 1, edited by G. Campbell, H. Paton; J. Skinner & Co., Ltd., Edinburgh, for the Stair Society.
83. *Ibid*, p. 14.
84. *Op. Cit.*, Appendix A, p. 358.
85. *Ibid.*
86. SHERIFF AENEAS MACKAY—A SKETCH OF THE HISTORY OF SCOTS LAW, p. 10, (a pamphlet).
87. Published in the Judicial Review, Vol. xiv, at p. 17.
88. 1934 J.C. 103 at p. 134.

an authority of equal, if not of greater importance than former decisions. As late as 1934, there is an instance of Voet being referred to by the Scottish Bench in the dissenting judgment of Lords Mackay, Wark and Carmont, in the case of *Sugden v. H. M. Advocate*.[88] At the same time, it must be admitted that the authority of the decided case in Scotland is now very great and absolutely binding in certain instances. The authority of the institutional and other text writers still exists, but is largely superseded by that of judicial decisions. The extent to which the doctrine of *stare decisis* is today accepted in Scots law may be summarized as follows:

1. The decisions of the House of Lords in Scots appeals or upon questions of general jurisprudence are finding on all the Scottish courts.

2. Decisions of the whole Court of Session[89] or of a court of seven judges,[90] are binding on the Court of Session and on all inferior courts.

3. Decisions of the Divisions of the Inner House of the Court of Session are binding upon these Divisions, and there are dicta to the effect that they cannot be overruled by, and are binding on, the other Division,[91] which is a court of coordinate jurisdiction.

4. Decisions of the Inner House are binding upon the judges of the Outer House and upon all inferior courts.

5. Decisions of judges in the Outer House are not binding upon one another nor upon the inferior courts, although generally regarded as authoritative if no higher authority exists. If there existed a *series rerum judicatarum* of Outer House decisions, such would probably be regarded as absolutely finding on the lower courts.

6. It is doubtful if a Sheriff Substitute is absolutely bound by a previous decision of his own Sheriff Principal. He is not bound by the decision of any other Sheriff Principal, nor, of course, by that of any other Sheriff Substitute.

In addition to such exceptions from the rigid rule of *stare decisis*, the following may be noted: A recent case may be said to cast some doubt on whether it can be held to be definitely decided that decisions of the whole Court of Session, or of a court of seven judges, are absolutely binding on the whole Court of Session. In the case in question, *Sugden v. H. M. Advocate*,[92] it was held by three of the judges, forming the majority deciding the case, that the present full Court of Justiciary (which is just the Court of Session sitting as a criminal court), consisting, as it did, of a larger number of judges than in 1773, could reverse a decision by a full Bench of that court as constituted at that date. There may therefore also be room for doubt as to whether each Division of the Court of Session would always be absolutely bound by its own previous or by such decisions of the other Division. Such a state of affairs seems inconsistent with the means of escape provided by the Court's power to convene a bench of seven judges, or a full bench, to decide matters of unusual difficulty. Such a court is not a mere advisory court. It decides the case and has full power to, and does, overrule decisions of the Divisions.[93]

Comparison of the American and Scottish Doctrines of Stare Decisis

The primary point of this brief examination of the two doctrines is to ascertain whether it can be said that because the Scottish doctrine of *stare decisis* is a little less rigid than the English doctrine, it is more similar than the latter to the American doctrine. In considering this question, it must be admitted that there is now really not much difference in practice between the Scottish and English doctrines of *stare decisis*. A greater similarity might have been claimed in the early part of the nineteenth century between the Scottish doctrine of that time and the present American doctrine. In Scotland, the development of the binding authority of the decided case has been largely a growth of the last century and a half. The present doctrine in Scotland may be said to share the following characteristics with the American doctrine:

(1). Both are more flexible than the English doctrine.

(2). Both strongly respect legal principles as criteria for arriving at a judicial decision.

(3). Both use the device of distinguishing out of a precedent, if reluctant to follow it.

(4). Both consider that precedents which were based on social conditions now obsolete should not be binding.

(5). The same view is held by both about precedents based on some fact or law which has ceased to be accepted, or is no longer in force.

The Scots law view[94] in regard to the last two observations is to the effect that a decision may be challenged if it proceeded on views of morality, political economy, or religious observance which are no longer held in esteem,[95] or that it was founded on some theory of physical fact which modern science has shown to be baseless.[96] In Scots law a decision may also be challenged on the grounds that it is inconsistent with prior authorities which were not brought to the notice of the court.[97] In American law, there seems to be a much stronger tendency to keep decisions in conformity with modern social conditions and requirements than can be said to exist even in Scots law. This tendency frequently leads to the apparent inconsistency with *stare decisis* which so disturbs the English lawyer. While it may perhaps be said that there is now a tendency in English law towards a less rigid adherence to the doctrine of *stare decisis*, the Scots law attitude to that doctrine (although much more strict than in the latter part of the eighteenth and first part of the nineteenth centuries), still seems to approximate much more nearly to the American view than does the English attitude.

89. Rose v. Drummond, 1828, 65. 945.
90. Yuill's Trs. v. Thomson, 1902, 4 F. 815.
91. Gardens Executor v. More, 1913, S.C. 285 per Lord Dunedin at p. 288; and Cameron v. the City of Glasgow, 1936, S.C. (H.L.), 26 per Lord Thankerton at p. 29.
92. 1934 J.C. 103.
93. Lord Advocate v. Zetland, 4 R. 199. Huttons Trs. v. Hutton, 1916, S.C. 860.
94. INTRODUCTION TO THE LAW OF SCOTLAND by WM. GLOAG and R. C. HENDERSON, Edinburgh; W. Green & Son, Ltd., p. 9 of 2nd ed., 1933.
95. Bowman v. Secular Society, (1917), A.C. 406.
96. Welldon v. Butterley Coal Co., (1920), 1 Ch. 130.
97. Mitchell v. Mackersy, (1905), 8 F. 198.

SUMMARY OF ACTIONS TAKEN BY HOUSE OF DELEGATES

Detailed account of House proceedings will be published in our November issue; only some of the principal matter can be summarized here.

The House took the following action:

Concurred in Assembly resolution creating a National Defense Committee.

Ratified the participation of the American Bar Association in the Inter-American Bar Association.

Concurred with the Assembly in making the Director of the Administrative Office of the Courts of the United States an *ex officio* member of the House of Delegates.

Declined to approve or disapprove the part of the report of the Civil Liberties Committee which commented unfavorably on the bill to deport Harry Bridges.

Disapproved the enactment of the O'Mahoney-Hobbs bill (S. 2719 and H. R. 7035) to amend the Clayton Act.

Concurred with the Assembly in approving resolution offered by Chairman Sumners of the National House of Representative Judiciary Committee, to provide a method, alternative to impeachment, for the judicial trial of charges of misconduct against judges of the United States Courts other than the Supreme Court.

Favored the transfer of Section 518 of the Tariff Act of 1930, as to the United States Customs Court, to the Judicial Code.

Deferred to the next meeting and the presentation of a definitive bill the recommendations of the Section of Criminal Law as to strengthening the Federal elections law.

Asked each State Bar Association to have one of its committees make a survey of the salaries paid to judges of the State Courts, their functions, the number of cases tried, etc., in relation to population served.

Adopted amendments of Section 27 of the Canons of Professional Ethics.

Adopted a report by the Committee on Professional Ethics and Grievances, to the effect that the problems presented by Bar Association rosters are being worked out within the present Canons and Rules as to Law Lists.

Adopted various resolutions offered by the Section of Taxation, as to Federal tax laws and procedures.

Approved the proposed Uniform Simultaneous Death Act.

Deferred until its next meeting the consideration of a proposed Uniform State Act as to Administrative Procedure.

Approved a recommendation of the Committee on Jurisprudence and Law Reform as to the procedure by three-judge District Courts and the powers of a single judge therein.

Left to the Board of Governors the decision whether, under existing and prospective conditions, a mid-winter meeting of the Board of Governors should be held, and, if so, at what time and place.

Approved for consideration by the Congress a proposal that Trial Examiners of the National Labor Relations Board be chosen as the result of special civil service examinations as to their experience, training and qualifications for the impartial weighing and finding of facts; also that such Trial Examiners should not be selected by the Board itself, but through appointment either by the Administrative Office of the United States Courts or by the Circuit Court of Appeals of the District of Columbia or through appointment by the President with the advice and consent of the Senate; also, for consideration, that the report and findings of such a Trial Examiner, when rendered after due hearing according to law, should in all subsequent proceedings in the particular matter be given a status and weight similar to that given to the report and findings of a special master in the District Courts of the United States.

The House had before it an interesting and imposing agenda. The list of its completed work as given above proves that fact. The narrative account, in detail of the House action on these matters, will, as already stated, appear in our next issue. We feel sure our members will find it of interest.

Kay-Hart

THOMAS BENJAMIN GAY
Chairman, House of Delegates

AMERICAN BAR ASSOCIATION JOVRNAL

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THE 1940 MEETING

The sixty-third annual meeting, whose proceedings are chronicled at length in this issue, will be remembered as thoroughly enjoyable and highly creditable to the Association, as well as useful to the profession and the public. There was an inspiration, as well as a sense of timeliness and fitness, in the revisiting of historic shrines and scenes inseparably linked with constitutional government in the United States; and this background indubitably had its effect upon all of the proceedings of the week.

This was not a meeting at which many major issues were presented for debate and the development of a consensus of opinion through the reconciliation of variant views. The proceedings of the Assembly held vital interest; the House of Delegates worked through an impressive calendar of important work. Yet the strongest undertones were of unity and accord in the presence of grave perils and great tasks, abroad and at home. There was no mood of division, no insistence on personal opinions, no centrifugal tendencies at work.

President Beardsley crowned and concluded his year of diligent service with an annual meeting which is just cause for pride and gratulation. President-elect Lashly had been devoting much time and thought to preparation for his duties; and his resonant address at Valley Forge showed a quick, firm grasp of Association affairs and a militant readiness to lead the Bar in doing all it can to help a Nation confronted with supreme tasks of preparation for the common defense.

The key-note and animating spirit of the Philadelphia meeting were this awareness of the uncertainties which lie ahead and the need that American lawyers shall be organized and ready to assist in every stalwart way. The creation of a National Defense Committee to cooperate with all governmental authorities in mobilizing whatever assistance may be needed from lawyers, was a natural expression of this eagerness to help.

The annual dinner was a brilliant and inspiring occasion, made notable by addresses which were worthy of the finest traditions of postprandial oratory at our meetings. Everything said and done was pervaded with an anxious realization of the dangers which beset representative government in a world turned totalitarian. The unity of the Americas was attested as a standard of hope.

Our hosts of the Philadelphia Bar Association were both gracious and competent in all of their well-planned provisions for the visitors. The entertainment was of a quality and distinction characteristic of Philadelphia and its beautiful environs.

To Retiring President Beardsley and other officers who contributed much to the success of the meeting and the substance of the year's work under conditions increasingly difficult, the grateful appreciation of the Association is due. To President Lashly goes out the earnest hopes and best wishes of a profession ready and eager to respond to his every call for duty. This will not be an easy year, for American lawyers or for officers of the American Bar Association; but the unity and the spirit of the Philadelphia meeting will give strength and cheer to those who have to cope with the many problems at hand.

A WELL-EARNED AWARD

The Gold Medal of the Association for Conspicuous Service to the Cause of American Jurisprudence was most fittingly presented to Dean Roscoe Pound at the annual dinner of the Association in Philadelphia. An account of the presentation, the appropriate tribute paid by James Grafton Rogers and Dean Pound's gracious reply will be found in this number.

Here we speak of this richly deserved award to note that for more than thirty years Roscoe Pound has been a constant attendant at our meetings, a beloved figure in our reunions, a tireless worker in nearly every field of legal research, and an originator and staunch supporter of many of the accomplishments of the Association. His was the first clear voice three decades ago in favor of restoring to the Supreme Court of the United States its ancient rule-making power. His contributions to American Jurisprudence have been continuous. Even today his services to various Sections of the Association are substantial.

GOOD SENSE OF THE ASSEMBLY

The growth of the membership of the American Bar Association and the multiplication of its activities, resulted in a change of its structure to that of a representative form of government.

It was however desired to retain all the democracy possible. The responsibility for the administration of the affairs of the Association was necessarily vested in the House of Delegates and the Board of Governors, but important powers were reserved for the membership at large.

The organic law established an "Assembly" at which every member who desired might participate in the activities of the Association. The Assembly was given the right to elect its quota of members of the House of Delegates. Amendments to the Constitution require the concurrence of the Assembly and the House of Delegates, and in case of disagreement between these two bodies, the difference of opinion is resolved by a referendum vote of all members.

The Assembly was also given authority to conduct and regulate the public discussion of resolutions "pertinent to the legal profession or to the objects to the Association" at an open forum session of the Assembly.

The responsibility for conducting, within reasonable bounds, an open discussion of matters of concern to the profession was a real responsibility, properly placed on the Assembly itself. No small part of that responsibility has been and is to see to it that the subject-matter of resolutions, debate and action is never permitted to drift into divisive and discordant matters on which debate and action at the time would only weaken the Association and serve personal or partisan purposes outside its scope.

Resolutions were submitted to the Committee on Resolutions opposing a third term for presidential candidates. All of them would have provoked acute partisan controversy on the floor of the Open Forum. The committee on resolutions presented a substitute for those resolutions, proposing that the Constitution of the United States should be amended so that the term of the President should be six years and that he should not be eligible for reelection. A minority report of that committee opposed the submission of that resolution as not pertinent to the objects of the Association and as introducing those questions at the heighth of a national political campaign.

At this difficult and delicate juncture, the moderation and good sense of the Assembly manifested itself. A motion to lay all those resolutions on the table, prevailed by a decisive vote.

That vote is not to be considered as indicating the views of the membership of the American Bar Association on the third term issue. Doubtless many of those who voted to table the resolutions were opposed to a third term. The vote should be appraised only as confirming the fortunate fact that, in the midst of a spirited National political campaign, matters which have been submitted to the electorate in open controversy between the political parties will not be debated and acted on by the Assembly of the American Bar Association.

The Assembly has demonstrated that it can be relied upon not to yield to political clamor and that it will resist and defeat all efforts to divert its consideration from matters which concern lawyers as members of their great profession.

OUR GUESTS FROM ABROAD

The 1940 meeting of the Association was honored by the presence of distinguished guests from abroad including those from the Bar of Canada, whose participation was token of our long and close kinship with the lawyers and people of all of the provinces of the Dominion, as well as of our common concern for the outcome of the struggle in which the British Commonwealth of Nations is heroically engaged.

The return of Mr. Leonard W. Brockington, K.C., this time as Delegate of the Canadian Bar Association, was warmly welcomed by old and new friends; and his eloquent address, which is published in this issue, stirred the great dinner audience as rarely such assemblages are moved. The eternal verities of liberty under law, and England's deathless contributions to the American heritage, were portrayed with deep earnestness and reality. His close association with the Prime Minister of Canada during the present war gave an especial weight to his message.

In an informal and unofficial capacity came also the distinguished President of the Canadian Bar Association, Mr. D. L. McCarthy, and his gracious wife. Although he made no public address, his friendly presence and hearty participation in many functions were a most acceptable token of the mutual esteem and good will, as well as the close relationship, between the organized lawyers of Canada and the United States. That the Bar Association of Canada has decided not to meet again "until the war is won," brought home to many persons the serious impact of that struggle upon the legal profession in Canada.

TRIBUTE TO CONGRESSMAN SUMNERS

One of the most dramatic and significant incidents of the Assembly and House sessions was the presence of the distinguished Chairman of the Judiciary Committee of the National House of Representatives, Hon. Hatton W. Sumners, who came to Philadelphia to sponsor, and to secure Association support for, a resolution endorsing his Bill to provide an additional and judicial method for the prompt and fair trial of United States judges, other than members of the Supreme Court, against whom the Judiciary Committee and the House of Representatives find evidence of their departure from the constitutional standard of "good behavior" in their high office. Judge Sumners' remarks in support of his resolution in the Assembly were replete with humor, earnestness and good sense; he won that body completely, and the House followed suit. Probably no member of the Congress has been as outspoken and practical a champion of true independence for a competent Federal judiciary, as has this eminent Texan, who has also been a devoted friend of the American Bar Association.

Probably no greater tribute has ever been paid to the Association and the authority and influence of its representative government, than was manifest in this agreeable visit by the Chairman of one of the most powerful Committees of the National House, a past master of the art of legislation, to seek and obtain the support of the Assembly and House for a Bill which he has introduced in the Congress. He did not have some one else offer a resolution to help along his Bill; he came and took the play. He railed and warned against delay; "if you endorse this bill it will pass," was his plea. His remarks at the third (Thursday) session of the Assembly should be read by every lawyer. They exemplify persuasive discourse in the modern mode; the hesitant or doubtful were moved to vote "aye." Truly the deliberations of the Assembly and House of the American Bar Association have gained in stature and prestige, under its democratic form of government.

WALTER P. ARMSTRONG RE-ELECTED

The JOURNAL feels privileged to announce that Walter P. Armstrong of the Memphis Bar has been re-elected to the Board of Editors for a term of six years. This action was taken by the Board of Governors at the Philadelphia meeting, Mr. Armstrong's previous term having expired. He has been an invaluable member of the Board.

ORGANIZED LAWYERS OF THE AMERICAS

Action taken at the annual meeting confirmed the adherence of the lawyers of the United States to the Inter-American Bar Association, now being brought into being, in the interests of better cooperation and closer understanding among the lawyers of this hemisphere, at a time when such a solidarity may mean much for the future of a law-governed world. The lawyers of the various countries have long worked together harmoniously and tolerantly in many projects of common interest; but the new federation, with the support of representatives of the American Bar Association and its constituent organizations in the States and localities, will, it may be devoutly hoped, mean still more of significant conference and teamwork among lawyers throughout the Americas.

Those members of the American Bar Association who have been active in the Inter-American Bar Association did much to advance its interests, through conferences in Philadelphia. They and the cause which they had espoused were fortunate in the timely presence of Hon. Alejandro Alvarez, of Santiago, Chile, representing the Bar of that important Republic and Raoul Herrera-Arango, representing the Bar of our neighboring Republic of Cuba, who also were honored guests of the Association at its annual meeting and interested onlookers at many of the sessions. They were introduced to the House of Delegates where they spoke felicitously. Their presence and participation reflected the trend of the times in behalf of greater accord of thought and action throughout the Americas, in behalf of the institutions and the territorial integrity of this hemisphere.

ARTICLES IN THE JOURNAL

As it is the policy of the JOURNAL to provide, within practicable limits of space, a forum for the free expression of the views of members of the Association on matters of importance to the profession and the public, and as a wide range of opinion elicits a representative expression of the varying views, the Association and the Board of Editors of its JOURNAL assume no responsibility for the views stated in signed articles, beyond expressing by the fact of publication a judgment that the contents of the article merit consideration by our readers.

Editorially the JOURNAL supports the policies and objectives of the Association as from time to time duly determined. The views expressed are not necessarily those of each individual member of the Board of Editors.

PRESIDENTIAL ADDRESS—THE LEGAL PROFESSION'S PREPAREDNESS

CHARLES A. BEARDSLEY

THE atmosphere, in which we come together for this Sixty-third Annual Meeting of the American Bar Association, brings to mind the words of Ralph Waldo Emerson:

> It is easy in the world to live after the world's opinion; it is easy in solitude to live after our own; but the great man is he who, in the midst of the crowd, keeps with perfect sweetness the independence of solitude.

The primary purpose of the American Bar Association is to promote the administration of justice. Its concern is the law. And we meet this week to give our attention to that concern, and to serve that primary purpose.

But, in the words of Emerson, we are not living "in solitude." We are living "in the world," and in the midst of "the world's opinion"—not an opinion in reference to law or the administration of justice, but an opinion in reference to force and to war. "It is easy in the world to live after the world's opinion." And this week it would be "easy" for us to give our attention exclusively to force and to war, and to forget the law and the administration of justice.

But it would not be so "easy"—it would be extremely difficult—for us to forget force and war, and to give our attention exclusively to the law and to the administration of justice.

Cicero tells us that "Laws are silent in the midst of arms." Edmund Burke expresses the same thought in these words: "Laws are commanded to hold their tongues among arms." And Burke adds to his recital of this command the warning that "tribunals fall to the ground with the peace they are no longer able to uphold."

This Annual Meeting of the American Bar Association symbolizes our refusal to obey the command—issued to laws and to lawyers—to "hold their tongues among arms." And it symbolizes further our purpose, and our determination, that even though "tribunals are no longer able to uphold" peace, those "tribunals" shall not "fall to the ground with the peace they are no longer able to uphold."

Presently, "the world's opinion is largely concerned with preparedness for war—with Germany's preparedness, and with England's, and France's, and our own, lack of preparedness, and with the far-reaching consequences of that preparedness and of that lack of preparedness.

I desire to confer with you for a little while this morning about the American legal profession's preparedness—about our preparedness to provide the American people with the legal service and leadership that are presently essential to the proper functioning of our organized society of free people—about our preparedness to provide that service and that leadership, either in a world at war or in a world at peace.

I shall not ask you to try to put from your minds all thoughts of war, or of preparedness for war, or of the consequences of such preparedness and lack of preparedness. For our present purposes, it is not needful that we should attain, in the words of Emerson, "the independence of solitude." Some of the lessons that we are learning, in regard to war and in regard to preparedness for war, may well be applied to peace, and to preparedness for peace. Some of these lessons may well be applied to the legal profession's preparedness for the task with which it is presently confronted.

How Great Is Our Responsibility?

What is the nature and the extent of the task that presently confronts the American legal profession, for the doing of which it must be presently prepared? How great is our responsibility today?

In a civilized society, the primary function and responsibility of the legal profession is to provide and to operate an administration of justice, under and pursuant to law. The administration of justice is civilized man's substitute for combats, for fights and for wars. Daniel Webster reminds us that justice is "the ligament that holds civilized beings together" and the "greatest interest of man on earth." The continued existence of a civilized society is very largely dependent upon the continued existence and operation of an administration of justice that adequately meets the needs of that society. Such an administration of justice is a substantial part of the foundation of civilization. And the primary responsibility today, of supplying, protecting and strengthening that foundation, rests upon the American lawyers and judges—upon you and upon me.

How does our responsibility today compare with the responsibility that rested on our profession in former years?

Speaking at the Annual Meeting of the American Bar Association in Chicago in 1930, the Honorable Charles Evans Hughes, then recently appointed and confirmed as the Chief Justice of the United States, declared: "We do not blink at the fact that the greatest need in this country today is the improvement of the administration of justice." Bearing in mind that "the administration of justice" is just another name for the services rendered to the American people, by lawyers and judges, in the courts and in their offices, suppose we consider for a moment how the need today for improvement in those services compares with the need ten years ago, when the Chief Justice declared it to be "the greatest need" then facing the American people.

The principal obstacle that has stood in the way of needed improvements in our services is the oft-encountered tendency of the Congress and the State Legislatures to be unresponsive to the public need for remedial legislation. In spite of this obstacle, many substantial improvements have been effected during the last ten years, under the leadership of the organized legal profession. But many of the legal problems of ten years ago are still unsolved. And to those unsolved legal problems there has since been added an immeasurable mass of new legal problems, most of which are still awaiting solution.

These include the new problems that have arisen because, since the Chief Justice spoke ten years ago,

the legislative mills of both the Nation and the States have been diligently grinding out new laws, while hundreds of boards, bureaus and commissions have been busily turning out new rules and regulations, all of which laws, rules and regulations vitally affect the lives, the liberty and the property of the American people, and present new legal problems to be solved by American lawyers and judges.

Our responsibilities have been further increased by a marked growth in the abuses of bureaucratic power, by widespread unemployment, popular discontent and class consciousness, by the incessant impact of foreign and domestic propaganda against our form of government, and against our American economic system, and by all but world-wide wars, preceded and accompanied by an era of international lawlessness and immorality.

In other countries, millions of people are being deprived by force of the rights of man, gained as a result of his struggle through the ages. And, for want of enlightened leadership, many more millions of people are voluntarily, though perhaps unwittingly, destroying the foundations of long-established institutions, thereby, like Esau of old, exchanging their birthright for a mess of pottage.

Granting that the solution of the legal problems of ten years ago was "the greatest need" then facing the American people, that solution would have been mere child's play, as compared with the solution of the legal problems that are facing them today.

It is the responsibility of each and of all of the 160,000 members of the American legal profession—it is your responsibility and it is my responsibility—to solve these problems, and to provide the American people with the enlightened leadership that will enable them to combat these forces of destruction. Never before in our history were the American people in as great need, as they are today, of the services and the leadership of an alert, diligent, intelligent and sane legal profession.

The Extent to Which We Are Presently Prepared

To what extent are we of the legal profession presently prepared to discharge this grave responsibility?

Our manpower, which may be likened to the armed forces of the nation's military establishment, is reasonably adequate. The vast majority of the 160,000 American lawyers and judges possess good moral character, are learned in the law, are loyal American citizens, and are unqualifiedly devoted to the Constitution which they have sworn to uphold.

Our laws and rules of procedure—the tools that we must use in our service to the American people—which tools may be likened to the equipment of the nation's military establishment, are in need of repair and replacement. Much of our court procedure is antiquated, moss-covered and time-consuming. And much of the procedure of our administrative tribunals is obscure and arbitrary, and unfair to the citizens, whose rights are subject to the actions of these tribunals.

Our organization, consisting primarily of voluntary state and local bar associations, integrated state bars and the American Bar Association—an organization that may be likened to the organization of the nation's military establishment—is insufficient to enable us to do the task that presently confronts us.

The Divided Responsibility

The responsibility for our lack of preparedness, and for doing those things that must be done, to the end that we shall be adequately prepared, is divided between the law-makers of the nation and of the states, and the American lawyers and judges.

The Congress and the state legislatures are responsible for the condition of our equipment. The state legislatures are responsible for the effectiveness, and lack of effectiveness, of the organization of the bars of the several states.

The Congress, the state legislatures, the courts and the lawyers share the responsibility for the adequacy of our manpower—for our moral and educational standards, for our loyalty, and for our ability, our willingness and our determination, to do the task that is presently ours to do.

And we alone are responsible for the effectiveness, and lack of effectiveness, of our voluntary state and local bar associations, and of the American Bar Association.

The time has come for prompt action by all those who share this responsibility—by the Congress, by the state legislatures, and by the 160,000 lawyers and judges.

Each of the lawyers and judges can make a substantial contribution toward the discharge of his responsibility, by his support of a local bar association, of a state bar association, and of the American Bar Association. All but non-existent is the lawyer or the judge who cannot if he will contribute the amount of the annual dues of these three organizations. And all but non-existent is the lawyer or the judge who cannot if he will give some part of his time and of his energy, in these three organizations, in promoting and effecting our preparedness to discharge our present-day responsibilities. In the words of Carlyle: "Men do less than they ought unless they do all that they can."

The Time for An Awakening of the American Legal Profession

During the last few weeks, the American people have been suddenly awakened to their unpreparedness for war; they have witnessed the calamitous consequences of unpreparedness for war; and they have spontaneously developed a fixed determination presently to prepare for war.

The time has come for a like awakening, by the 160,000 members of our profession, to our unpreparedness to discharge our present day responsibilities—to our unpreparedness for peace—and to the calamitous consequences of unpreparedness for peace. And the time has come for a like development, throughout the ranks of our profession, of a fixed determination presently to prepare for peace.

Unpreparedness for war is not the only unpreparedness that may result in the destruction of a civilization. A civilization may be destroyed by unpreparedness for peace.

It is unpreparedness for peace, largely evidenced by the absence of any satisfactory peaceful means of settling disputes—by the absence of any satisfactory administration of justice—that in other countries has been causing many millions of people to choose to go to war—to choose to put aside civilized man's method, and instead to use primitive man's method of settling disputes—thereby threatening the destruction of their own civilization, and of the civilization of other millions of people.

And it is unpreparedness for peace, largely evidenced by the absence of enlightened leadership, such as the

members of the legal profession are best able to provide, that in other countries has been causing many millions of people voluntarily to destroy the foundations of long-established institutions, and voluntarily to surrender their liberties. In the words of Edmund Burke: "The people never give up their liberties, but under some delusion." And the people never act under a delusion, save when enlightened leadership is lacking.

The foundation that the members of the American legal profession must ever protect and defend, and that the members of the American legal profession must lead the American people ever to protect and defend, was laid here in Philadelphia, a century and a half ago. The representatives of the Colonies, who laid that foundation, used the basic materials that man had slowly and laboriously fashioned through the ages. They did their work in the light of the history of mankind, as that history was known to them. They thought that they were laying a sound foundation. Their hopes were expressed by Benjamin Franklin, on the closing day of the Constitutional Convention, as the delegates one by one signed the completed document. Probably many of you will recall that Madison's notes disclose that, as the Constitution was being signed, the eighty-one year old Franklin pointed to the picture of the sun, painted on the back of Washington's chair, and remarked:

> Painters have found it difficult to distinguish in their art a rising from a setting sun. I have often and often, in the course of this session and the vicissitudes of my hopes and fears as to its issue, looked at that picture behind the President without being able to tell whether it is rising or setting. But now at last I have the happiness to know that it is a rising and not a setting sun.

Franklin's vision of the rising sun was an accurate vision. The new republic, built on that foundation, has prospered. Its sun has continued to rise, higher and still higher, for a century and a half.

Our enjoyment of life, liberty and the pursuit of happiness, and of each and all of the other rights that man has gained as a result of his struggle through the ages, rests on the foundation laid here by the framers of the Constitution.

Our possession and enjoyment of material things rest on that foundation. Although we constitute only seven percent of the world's population, and occupy only six percent of the land area of the world, because our governmental and economic structure is built on that foundation, we are eating twenty-five percent of the world's sugar, drinking fifty percent of the world's coffee, and riding in sixty-eight percent of the world's automobiles.

That foundation is worth protecting.

The pressing need for its protection, from the same forces that have destroyed the foundations of civilization in other countries—forces that are presently at work in this country—is a challenge to each of the 160,000 members of the American legal profession presently and vigorously to prepare to provide enlightened leadership to the American people, to the end that they may protect, strengthen and preserve that foundation.

Whether the sun of Franklin's vision shall continue to be a rising sun, or shall now become a setting sun, depends to a very large extent upon our preparedness for peace—upon our alertness, diligence, intelligence and sanity.

You and I must abandon the attitude expressed in the verse:

> I know of things, not just a few,
> But, ah, so very many of them
> That someone really ought to do;
> And I'm not doing any of them.

The challenge to you and to me is loud. It is urgent. It calls for preparedness for peace—not in the distant future, but now.

In spite of our habitual conservatism—in spite of our strong inclination to follow precedents—the precedent established when "Nero fiddled while Rome burned" is one precedent that we need not follow—one precedent that we must not follow. We may, and we must, prepare now—before it is too late.

In the words of Carlyle:

> Nothing ever happens but once in this world. What I do now, I do for all time. It is over and gone, with all its eternity of solemn meaning.

Announcement of 1941 Ross Essay Contest

Conducted by American Bar Association Pursuant to Terms of Bequest of Judge Erskine M. Ross, Deceased

INFORMATION FOR CONTESTANTS

Subject to be discussed:

"Prospective Development of International Law in the Western Hemisphere as Affected by the Monroe Doctrine."

NOTE: It is expected that the discussions will deal with the subject prospectively in view of present world conditions and that the effect of the Monroe Doctrine on the relationship of the Americas will be within the scope of the discussions.

Time when essay must be submitted:

On or before February 15, 1941.

Amount of Prize:

Three Thousand Dollars.

Eligibility:

Contest will be open to all members of the Association in good standing, except previous winners, members of the Board of Governors, officers, and employees of the Association.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted and the copyright thereof.

An essay shall be restricted to six thousand words, including quoted matter and citations in the text. Footnotes or notes following the essay will not be included in the computation of the number of words, but excessive documentation in notes may be penalized by the judges of the contest. Clearness and brevity of expression and the absence of iteration or undue prolixity will be taken into favorable consideration.

Anyone wishing to enter the contest shall communicate promptly with the Executive Secretary, American Bar Association, 1140 North Dearborn Street, Chicago, Illinois, who will furnish further information and instructions.

SPEECH OF LEONARD W. BROCKINGTON, K. C., CANADIAN DELEGATE*

MR. PRESIDENT, Ladies and Gentlemen: I have a friend in Canada who is sometimes received (as I have been tonight) with more cordiality than he thinks he deserves and is sometimes introduced with a promise that is greater than his performance. He has a habit of meeting that emergency by relating an experience which he says he once had. As I have heard recently of many other people who had the same experience I am forced to the conclusion that I have yet another friend who relies upon his imagination for his facts and upon his memory for his wit. (Laughter.) The experience to which he referred was this. He was once walking in the State of Virginia when he came to a colored community where there was a little church. On the church there was a sign which said in large letters "Annual Strawberry Festival." Underneath in small letters was written, "On account of the depression, prunes will be served." (Laughter.)

I need not labor the moral of that story nor tell you of the sinking and shrinking feeling of one who was introduced as though he was Michael Angelo but is deeply conscious of the fact that he is only Mickey Mouse. (Laughter.)

I am deeply grateful for your courtesy in asking me to be your guest on this memorable occasion. I want to thank you also on behalf of the President of the Canadian Bar Association, Mr. D. L. McCarthy, whose presence at this head table fortifies me beyond measure. Some of you may be pleased to learn that Mr. McCarthy belongs to the Irish Macs. They are different from that other branch of the family, of whom it was once said by a bewildered gentleman, that he never really understood what was meant by "The meek shall inherit the earth" until he realized that "Meek" was the plural of "Mac." (Laughter.)

Mr. McCarthy is here as a pattern of international goodwill and a paragon of political neutrality. He is really on a Bar President's holiday. In other words, he is engaged in knocking all the conventions out of somebody else's convention. He is doing it very successfully, and I am delighted to have him at this table with me.

It is very significant that at this time, in this place, in this country, two Canadians should be standing in this company. It is to me (and I hope to you) a grand comforting thought that two Canadian lawyers should meet with this great assembly of American lawyers for the re-affirmation of an old faith under the benediction of ancient charities. It is particularly fitting that we Canadians should be meeting with you in America, in this place, when the blasphemies of the world are daily growing louder and its miseries are being heaped heavier and higher. It is an inspiration to stand in this kindly City of Friends, in this sanctuary of liberty. For in this place wise men once resolutely determined that disciplined liberty should go forth into this land under the influence of the Sermon on the Mount, they knowing that if those things departed from them there would be an end of truth and mercy and of goodness. In this city they resolved that for them and their children and their children's children freedom should not be a fugitive memory in the hearts of old men in the chimney corner, but the very life-blood of the youth of the land they loved. Here was born a great nation which Oliver Wendell Holmes says "Not by aggression but by the naked fact of its existence is an eternal danger and an unsleeping threat to every government that founds itself upon anything else than the consent of the governed." (Applause.)

In this city tonight I am proudly happy because I believe that the day will come when your own Liberty Bell, with a tongue that yet speaks after its age-long silence, will join the peal of the Carillon at Ottawa, and the deep inplacable tones of Big Ben, to ring the knell of tyranny. (Loud applause.) Here I stand deep in the hope of mankind, and today "amid the heartbreak in the heart of things" I can hear across your river one of the grandest of all American voices, the voice of Walt Whitman, bidding the world remember when all life and all the souls of men and women are discharged from any part of the earth, then only will the instinct of liberty go from that part of the earth. Exhorting his fellow countrymen to heed what he calls the faithful American lesson, he speaks in words triumphant, in accents unafraid, "Liberty relies upon itself, invites no one, promises nothing, sits in calmness and light, is positive and composed, and knows no discouragement—the battle rages with many a loud alarm and frequent advance and retreat; the enemy triumphs; the prison, the handcuff, the iron necklace, the anklet, the scaffold, the garotte do their work. The cause is asleep, the strong men's throats are choked with their own blood, the young men drop their eyelashes toward the ground as they pass by. And has liberty gone out of that place? No, never! When liberty goes it is not the first thing to go, nor the second, nor the third. It waits for all the rest to go: it is the last." (Applause.)

Ladies and Gentlemen, the echo of that voice resounds in many places other than Philadelphia.

Yes! I am proud to be in this company. But there is a vacant chair rarely before empty in your long and honorable history. I miss one man as you miss him, and as we in Canada would have missed him had we met in convention this year. I refer to the representative of the Bar of England. I don't know who he would have been: he may have been one of those strange Englishmen of whom a Frenchman once said, that the average Englishman is like a poker; he possesses all the poker's rigidity but lacks its occasional warmth. (Laughter.) He probably would have been a Scotsman (laughter), but whoever he was, this we know about him: he would have been full of deep unspoken certainties, he would have been imperturbable, he would have probably cheered us up, and of all the children of the tempest he would have been the least shaken or the most unshaken.

Now, I don't know what the country he represents means to you. To some of you perhaps she may be an alien and sinister power. I hope she is not. To many of you who listen, she may bring back memories of the oppression and the injustice and the tyranny

*Delivered at the Annual Dinner of the American Bar Association at Philadelphia, Thursday, September 12, 1940.

As Mr. Brockington had no manuscript the above text is a transcript from stenographic notes.

of her rulers (but never of her people) in the days that are gone. But whatever have been her failings, whatever her shortcomings, whatever her sins, whatever her iniquities if you like, they will be pardoned when her warfare is accomplished. To some of you, perhaps, she is the paradox of the poet and the adventurer, of the merchant and the crusader, of the eccentric and the formalist, of age and youth, of heresy and orthodoxy, of courage and of mercy. To some of you she may just be a memory of a lovely countryside where order stands rooted in green disorder, of meadows shining in the rain, of blue-bells in the woodland, of ancient Gothic churches standing out like truth itself against an English sky.

To me she is the mother of freedom and of free nations.

Freedom was not a North American invention. The patents were taken out years ago by resolute and strong-willed Englishmen. You made it fierce, untameable, and living. Today in England I hear the echo of the praise of your own Emerson telling how in the turmoil and tribulation she has a pulse like a cannon and always sees more clearly when the skies are dark. I see her burdened with the honor and honored with the burden of the stewardship of humanity, I marvel at the courage and the wistful optimism that are born of her fields, her lanes, her hills and her valleys. I wonder if you remember a lovely passage in Mary Webb's "Precious Bane." It speaks about an English yeoman. "Kester never said 'winter,' he always said 'summer's sleeping.' He never said 'caterpillars,' he always said, 'there's butterflies as is to be on my cabbages,' and there was never a bud small enough nor sad-colored enough that Kester did not see within it the beginning of the blow."

I see England today true to herself "While the loud blasts that tear the skies serve but to root her native oak." I believe she knows, and will know, neither age nor weariness nor defeat, and in this City of Liberty, will you permit me to salute her, not in my own words but on the lips of an American woman who wrote twenty-five years ago with prophetic vein, words that might have been written this very afternoon.

> Shatter her beauteous breast ye may;
> The spirit of England none can slay!
> Dash the bomb on the dome of Paul's—
> Deem ye the fame of the Admiral falls?
> Pry the stone from the chancel floor,—
> Dream ye that Shakespeare shall live no more?
> Where is the Giant shot that kills
> Wordsworth walking the old green hills?
> Trample the red rose on the ground,—
> Keats is beauty while earth spins round!
> Bind her, grind her, burn her with fire,
> Cast her ashes into the sea,—
> She shall escape, she shall aspire,
> She shall arise to make men free:
> She shall arise in a sacred scorn,
> Lighting the lives that are yet unborn;
> Spirit supernal, Splendour eternal,
> ENGLAND!

(Loud applause.)

Ladies and Gentlemen, I shall be glad to take to the brotherhood to which I belong in Canada the message that this brotherhood in this city has so generously applauded the words of that American woman.

It is always an inspiration to be in a meeting of lawyers and to recall the great men of the past, the great statutes of the past, the great cases of the past and the great laws of the past, which have formed the very tapestry of our pattern of freedom. The Charter of liberty, the Magna Charta, the Habeas Corpus Act, the Bill of Rights, the Declaration of Independence; they are the milestones of human progress. The words of Erskine, of Lincoln, of Jefferson, of Alexander Hamilton,—They are the voices of human emancipation. For the Law in its majesty and its real grandeur is never on the side of oppression or of violence or of unfaith or murder. In its noblest moods it stands in compassion by the side of the Man with the Hoe, in the cell of the persecuted and by the funeral pyre of the martyr. It stands wherever a man holds his head erect and speaks the truth that is within him. It stands wherever great souls and minds fight against bigotry and darkness. For the law is the language of freedom and of free men.

It is a truism that your democracy and ours were built upon the harmony of the Greek concept of liberty and the Roman concept of law. That thing, wrought in primeval strength, is perhaps the greatest gift that the English-speaking peoples have given to the world, as long as we remember, always that without law there can be no liberty and without liberty there can be no law. That gift has been transmuted by the American people into the most sacred of all rights—and I think you have done it with an inspiration, a perseverance and a vision above all others—the rights of plain, ordinary simple men and women.

Mr. Lloyd George said the other day that the freedom for which we fight was the right of the Czech to dance around his maypole and the right of every Welshman with a song on his lips or in his heart, to awaken the echoes of his native valley. That is a simple truth and I believe its acceptance can be interpreted as your divine gift to mankind.

John Buchan, Lord Tweedsmuir, Governor-General of Canada, much loving and much loved, in a chapter of his autobiography just published, which he calls "My America" and which he dedicates with a remarkable insight and deep affection to your nation, says these words, "The American civilization has two main characteristics. The first is that the ordinary man believes in himself and in his ability, along with his fellows, to govern his country. It is when a people loses its self-confidence that it surrenders its soul to a dictator or oligarchy. In Mr. Walter Lippman's tremendous metaphor, it welcomes manacles to prevent its hands shaking.

The second is the belief, which is fundamental also in Christianity of the worth of every human soul,—the worth not the equality,—and this partly honest emotion and partly a reasoned principle that something can be made out of anybody if you look for it, or in canonical words, that ultimately there is nothing common or unclean."

Ladies and Gentlemen, I rejoice to be a Canadian speaking to Americans today. There is so much that I would like to tell you and so much for which my fellow citizens would like me to thank you. In Canada we have built much as you have built. We have raised our nation as you have raised yours as a living and eternal protest against the abominable doctrine of racialism. We have fashioned a democracy where everybody can contribute to the common good. We have believed in giving, as far as we can, an opportunity to every man to find some of the beauty behind the dross and the darkness. We have rejoiced too in the exaltation of little things.

"I come in the little things
Saith the Lord
Not in the rush of morning wings
Of majesty. But I have set my feet
Amidst the delicate and bladed wheat
That springs triumphant in the furrowed sod."

Our romantic history has been almost without blemish or stain. We have never been guilty of aggression. We cherish no hates, we seek no revenges, we pursue no aggrandizement. We have worked for peace and we have sacrificed for peace. When we have had to go to war to defend our liberties, we have marched forward with loyalty and courage, enduring to the end. In this war we have never spoken to the United States officially or semi-officially, directly or indirectly, any word that would ask you to say or do anything in this crisis other than what your own people of its own untrammelled will wishes to do or say. The people of Canada have neither dishonored your democracy nor our good neighborhood. (Applause.)

We feel, of course, that we speak the same eternal verities as you do, with the same accent. We passionately desire your good will because you are the keepers of the world's conscience; and if we had not your good will we would think there was something wrong about our own conduct. We have believed, perhaps, that the crash of events speaks more loudly than any cataract of words however brilliant they may be, from however high a place they may fall. But last and in the secret place of our own hearts, we have always known that true liberty needs no lobby in the United States of America. (Loud applause.) That is really why we have never spoken to you.

A few weeks ago the idealism of our two people met the realism of our two governments. They met in a pact between your country and mine by which you agree to defend us in certain eventualities and we agree to defend you. We came not as a suppliant but as a partner. To that marriage of realism and idealism we bring, with the approval of every class of our citizens, all the strength and responsibility which we have, a strength and responsibility perhaps beyond our numbers. We do not think that your Declaration of Independence will be weakened by this Declaration of Inter-dependence between us and you. We do not think that the British North America Act or the Statute of Westminster, or what our Prime Minister calls our "tried and traditional loyalties" will be impaired by the Ogdensburg agreement. But we know one thing. Living side by side together, in friendship and respect, we have reaped what we have sown; for we have sown and we have reaped in a land that has been tilled by goodwill and watered by the rains of conciliation and reconciliation. (Loud applause.)

My American friends! Through the darkness there will some day shine a great light. Soon the brute and boisterous force of violent men will be broken and a new world will arise on the ruins of this troubled earth which savagery has made hideous. It will be our duty and yours to help to remould it. When that bright day dawns I trust that your land and our land will both speak in the words of the unknown prophet of that race which has borne more than its share of human suffering.

"Bind up the broken-hearted!
Proclaim liberty to the captives!
Open the prison to them that are bound."

Deep in hope, a humble citizen of the land of your neighbors, I bid you farewell in this shrine of liberty. As your guest I thank my most cordial and gracious hosts. As a lawyer I salute you, my brothers, the moulders of liberty, its eloquent spokesmen, its untiring defenders. As a Canadian, I thank you for the generosity of your American hearts. As a man, I bid you join with me in the exultation of a great Englishman who, knowing you for what you are, reverently thanked God that Liberty is still an Eagle whose Glory is gazing at the Sun. (Loud and sustained applause.)

OUTSTANDING BAR ASSOCIATIONS GIVEN AWARDS

AT THE Cleveland meeting in 1938 a Resolution was adopted providing for an "Award of Merit" to State and local Bar Associations for outstanding service during the past year. One of the interesting and stimulating events of the Assembly Session at Philadelphia was the Report of the Committee on Award of Merit. The oral report of Mr. Morris B. Mitchell, of Minneapolis, Chairman of the Committee, is here given in full.

Inspiring Work of Bar Associations

The number of applications received from State and Local Bar Associations for the 1940 Award of Merit is more than double the number received last year. Many of these applications are lengthy, and it has taken a considerable amount of time for the members of the Committee to read and evaluate this mass of material. But it has been a truly inspiring task. These applications in the aggregate, show that the State and Local Bar Associations are doing a tremendous amount of work for the legal profession and the public.

Not so long ago, the main activities of most local bar associations consisted of an annual dinner with adequate entertainment features and an annual memorial service for departed members. Today, there are few cities which do not have bar associations with hard working officers and committee members who are active throughout the year. A reading of these applications brings the realization that the lawyers of this country, through their local, state and national bar associations, are rapidly becoming organized so that, as a profession, they will be able to meet any demands which the Nation may make upon them in the critical period which lies ahead.

There is not a bar association which submitted an application for this Award which does not deserve commendation for one or more of its activities during the past year. Obviously, we cannot mention all of these activities but following the precedent set last year, we will mention a few of the outstanding ones in the hope that they will be helpful to other bar associations. We, therefore, cite the following association activities as deserving of special commendation:

Honor List

California State Bar:—For their efforts to prevent juvenile crime, by furnishing speakers to California schools on subjects designed to develop respect for law and to discourage criminal acts.

New York State Bar Association:—For publication of a Lawyer's Service Letter, and for excellent service in reporting to its members proposed laws of interest to the bar.

Bar Association of the City of Boston:—For bringing about the resignation and subsequent indictment of a Clerk of Court and a Sheriff, for extorting money from employees, the Clerk of Court having been subsequently convicted and the Sheriff being now a fugitive from justice.

Charleston (W. Va.) Bar Association:—For improving the system of selecting jurors and for inaugurating a program of eliminating solicitation and other improper practices in connection with personal injury cases, including sending a letter from the Bar Association to the injured person and employment of a young lawyer to investigate all such cases.

Detroit Bar Association:—For an exceptionally effective bar education program, consisting of lectures on new developments in the practice of law, the subjects being selected by a poll of the bar.

Genessee County Bar Association of Flint, Michigan:—For bringing into effect the existing Michigan statutory provision for the creation and maintenance of County Law Libraries.

Los Angeles Bar Association:—For developing a Lawyers Reference Service System, designed to meet the needs of laymen in the lower income group, who need legal service at low cost and of others, both laymen and lawyers, who need the services of a lawyer experienced in some particular specialized field of law.

Passaic County Bar Association of Clifton, New Jersey:—For conducting weekly meetings, attended by over two thousand persons, in each of four sections of the county, for the instruction and training of applicants for citizenship, special emphasis being placed on the duties of citizenship.

A number of associations which submitted applications, had effective and well-balanced general programs which deserve special mention. Among such associations are:

Arlington County Bar Association, Arlington, Va.
Calhoun County Bar Association, Battle Creek, Michigan.
Columbiana County Bar Association, East Liverpool, Ohio.
Columbus Bar Association, Columbus, Ohio.
Hennepin County Bar Association, Minneapolis, Minnesota.
Plainfield Bar Association, Plainfield, New Jersey.
Toledo Bar Association, Toledo, Ohio.
Tulsa County Bar Association, Tulsa, Oklahoma.

Texas Is "Tops"

Our Committee would like to give an Award of Merit to each of these associations, but unfortunately, by the terms of our appointment, we are required to select one state and one local bar association for this Award. It has been exceedingly difficult to choose between so many worthy applicants. After careful consideration, however, we have unanimously decided that the State Bar Association Award should go to the State Bar of Texas for its work in developing, during the first year of the Texas integrated bar, a highly effective working organization. This organization has been responsible for organizing local bar associations in many counties where no such associations formerly existed, for drafting new Rules of Civil Procedure for Texas, and for sponsoring local meetings for discussing the proposed rules, for preparing an excellent manual on unauthorized practice for use of local bar associations, for publishing an outstanding monthly magazine, "The Texas Bar Journal," for conducting an educational program in connection with proposed rules for governing the Texas Bar under the integrated bar statute, and for a fine general program of activities. *In recognition of this outstanding and constructive work your committee is pleased to present the 1940* State Bar Association Award of Merit to Judge Few Brewster, as President of the State Bar of Texas. [Judge Brewster was present on the platform and received the parchment award amid the hearty applause of the delegates and audience.]

Cleveland Also Wins

Our committee has also unanimously decided that the Local Bar Association Award of Merit should go to the Cleveland Bar Association of Cleveland, Ohio, for an outstanding program which demonstrates what a hard working local bar association can accomplish. In making this award to the Cleveland Bar Association, we have taken into consideration that it is larger than many other associations which have submitted applications and that, therefore, more should be expected from them. But even measured by this high standard, we feel that the outstanding work of this association puts it in the lead for this year's award. Its numerous activities are carried on by 38 active committees with a total membership of 400 members, and with the assistance of a full-time secretary, housed in an association office. Such activities include the publication of a monthly magazine, the presentation of a series of 16 weekly radio programs, a successful campaign for the election of 6 candidates to the Cleveland Municipal Court, who were recommended by the association, the disbarment of a municipal judge for improper conduct, an investigation of the solicitation of legal business, which resulted in successful disciplinary action against eight lawyers, investigation of 125 cases by the Grievance Committee, followed by appropriate disciplinary action where warranted, establishment of a Registration Service for lawyers who desire to be consultants in specialized fields of the law, and the appointment of a Court Relations Committee which cooperated with the Cleveland courts in aiding them to function properly, and live within a reduced budget. In recognition of this excellent program, our Committee is pleased to present the 1940 Local Bar Association Award of Merit to Mr. Herbert Spring as President of the Cleveland Bar Association. [Mr. Spring also was present to receive the diploma of the award. The close of the awards was enthusiastically received by the audience.]

ADDRESS OF INCOMING PRESIDENT JACOB M. LASHLY

I AM grateful to President Beardsley for his kind words of introduction and commendation. And to you, gentlemen of the House of Delegates and members of the Association, for the honor you have shown me in choosing me for leadership and service, as you have done. You will want to have from me some statement of the plans I have in mind and some forecast of the policies I shall advocate in entering upon the duties of President. This is your right, as it has been the custom of our presidents.

I shall exert such influence as I may have, through the post of leadership to which you have appointed me, to carry on to completion the fine works which have been initiated during the incumbency of President Beardsley and during preceding administrations. Continuity of work and policies of the Association is necessary for the preservation of the investments of men and money which have been and are being made by its membership from year to year.

As my conception of the office of President is that of an agency, it shall be my constant endeavor to ascertain and execute the will of the Association as it shall be crystallized and made known through decisions of the House of Delegates and the Board of Governors and through actions taken by the Assembly in matters within the jurisdiction of that body.

The chief task which lies before us all in the coming year is that of preparation for adequate National defense. I do not hesitate to assume authority to pledge to the Government the complete and unreserved gift of all of the powers (and they are by no means insignificant), of all of the influence (it is not inconsiderable), of all of the creative abilities and administrative talents, of the courage and will to survival, of the organized Bar of America.

We are compelled by forces beyond our control to develop a military power sufficient to meet any possible force or combination of forces which may be brought against us. The necessity has arisen quite suddenly, at a time when the desire for peace was more universal and authentic among us than at any other time within our history. More especially among our young people, upon whom the burdens of training and the chief hazards of war always must fall. It seems now that the last clear chance which peaceful peoples may have to avoid disaster is that the aggressor nations shall know for a certainty that we are fully prepared to meet them. By this means there is hope that we may not be drawn into war, but if it must be war, we shall be prepared to win. To this end, the Association has empowered me to appoint a Special Committee on Defense, which will be charged with devising speedy and effective means for unifying and coordinating the services of the members of the Bar so that they shall be made available to the government in every precinct of the nation.

The country has not forgotten the contribution made by members of our profession in the last war; but we are better organized now and greatly increased in numbers. The Association has an active roll of 32,000 members of the Bench and Bar, and delegate representation from forty-eight state and thirteen local associations, having an aggregate membership, excluding duplications, of approximately seventy thousand more. One unit alone, the Junior Bar Conference, comprises more than 6500 younger men, distributed throughout the states, having also affiliations with local groups which in the aggregate add an even larger number.

The country must somehow be made ready to accept unwanted major changes in its way of life, in order to insure itself against the danger that its way of life might be lost forever. To a Standing Committee on American Citizenship, consisting of one member from each judicial circuit, has been committed the duty to instill enthusiasm and to seminate inspiration in the people of the United States toward a patriotic understanding and greater appreciation of the blessings and privileges which are America.

A Special Committee on the Bill of Rights, which the Association now for two years has maintained, has established a record of courageous leadership and fine discrimination in securing for the weak, the oppressed, or the misunderstood their day in court and a fair hearing, surrounded by the protections of justice, liberty and tolerance. It will be hard, on occasion, to distinguish between an enemy and a friend, and there will be important and vital work to do in this field, as the emotions are released through patriotic zeal, in the trying times which undoubtedly are ahead.

Some equipment, therefore, is now at hand, and preparation for further expansion of these facilities is in the making. In some of the things which must be done, lawyers are better qualified by their habits of thought and life, by training and experience, to accept leadership than others. The American Bar Association will hold itself in readiness, subject to command of the Nation's authorities and designated leaders for any work which its officers, sections, committees, or members may be given to do.

But while we resolutely give ourselves for whatever may be our share of responsibility and sacrifice made necessary by the plans which are being formulated for the defense of our country, our institutions and our lives, it will be our duty, as it is our natural desire, to go forward with our enterprises, to study the problems and to do the work which we are accustomed in normal times to do. Even more than in other years, it is my hope that we shall be able to serve our members and the public by continued and intensive devotion to the work of legal education, the elevation and preservation of standards of preparation for students, and the making of more efficient lawyers through the means of legal institutes for carrying the cultural program of the Association into the homes of lawyers already in practice; to the improvement of Judicial Administration by organized and persistent effort toward better implementation of the judicial department throughout the country; to a relentless and unyielding opposition to the growing and expanding powers of unregulated administrative agencies which are inclining in the direction of an abandonment of a government of laws, and the substitution of the bureaucratic discretion of a government of men; and to a renewal of dedication of the surplus powers of the Bar to the needs of poor persons, both by service without charge

Underwood & Underwood

JACOB M. LASHLY

as opportunity arises in the course of practice of lawyers and in the fuller support of legal aid by organized effort.

While we are exchanging many of the ways of comfort and peace for those of sacrifice and war; while we may seem to be taking on some of the trappings of dictators in order to protect ourselves from the threat of being over-run by the robots of Europe, it will be our duty to be even more watchful than before that we shall not by any acts or omissions of our own, lose that passion for justice and liberty which has distinguished the American ideal of life. In the course of integration of the powers of the nation in the Federal Government in order to resist the economic depression, fundamental changes in attitudes already have taken place, some of which have led us far from our original conceptions of Democracy. We have come now to live in groups, to think in groups, and to express our political interests upon the basis of mass goals. One is either a union worker, an industrialist, or a farmer, and such influence as he is able to exert for the formulation of Governmental policy or the making of laws will be used in what he conceives or is led to think will be for the material benefit and economic advancement of the group within which he is classified. Hence in a modern world, liberty is challenged on practical grounds. This infiltration of materialism into our life and Government is not native to America. By gradual processes it is derived from the dominant philosophies of Europe which exalt the importance of external activities, in which men may be regulated and restrained, and despise and mock the realm of spiritual activities and influence in which our Bill of Rights has provided that men shall be free.

The "Liberty" with which Mr. Jefferson declared in the Declaration of Independence that all men had been endowed by the Creator, was a creature of the spirit, such as is personal and individual, as religion and conscience are personal and individual, and can not be attributed to a group. The term "equal" in that immortal paper did not refer to any theory of property division but rather to an inner quality upon which is founded a fellowship of ambition and opportunity. Like justice, these elements are indispensable in any true concept of American Democracy. They are the qualities in government which give dignity to the human spirit, and they alone are worth the sacrifices which have been paid and which we are willing again to pay for them. America is facing the issue between Individualism and Collectivism in the management of business and property. It cannot be doubted that the pendulum has swung a long way in recent times in the direction of public control. The greater share in the management of material wealth assumed by Government is being assigned to the Federal as distinguished from State and Municipal authority. The conversion of the country into a compact, well-armed and centrally controlled unit for purposes of adequate self-defense is about to intensify and quicken these trends.

In its primary aspects, dealing with the ownership and management of external possessions is a political function, in the exercise of which every citizen has an equal right of voice and opinion with every other, but the Bench and Bar claim an added interest and acknowledge an especial responsibility to see that the restraints imposed by Government are administered with justice and regularity. That is the natural right of a free people. It is of the spiritual essence of the Bill of Rights, in full parity with the freedoms of Religion, Speech, Press, Assemblage and Protest.

The traditions which close about us here at Valley Forge would not tolerate in us either selfishness or fear. Washington was here more than a century and a half ago—and Marshall—and Hamilton, and because they were here then, we are enabled to be here now. The privations which they endured, the sacrifices which they made, were not concerned with the division or distribution of wealth; they were giving themselves to the uttermost to the building of a structure which would support the institutions of human liberty and justice. God give us the courage and the strength to emulate their great example as we turn now to the tasks and the duties which are before us.

Weintraub

Junior Bar Conference Officers, 1940-41. Left to right, Philip H. Lewis, Topeka, Kansas, Vice Chairman; Lewis F. Powell, Richmond, Virginia, Chairman; James P. Economos, Chicago, Secretary.

FREEDOM OF SPEECH AND PROPAGANDA*

By Francis Biddle

Solicitor General of the United States

A GOOD deal has been said about preserving the democratic traditions and ideals while at the same time we prepare for war. Those opposed to conscription, for instance, have argued that one step is incompatible with the other. And leaders of a rather skeptical segment of young people have asked, with a sort of superficial scorn, whether there was really anything worth fighting for if, at the threshold, we surrender the values we were being enlisted to preserve. The issues, if they could be said to be such, were a bit cloudy because the facts never met at the tape; or a totally different set of circumstances were assumed to launch succeeding generalities. Perhaps that was why public opinion was apparently so confused. How could the people understand, going about their business quietly for so long, always notoriously skeptical of Jeremiahs, yet suddenly horrified and unhappy over the rushing obliteration of country after country. The threat now seeming so much suddenly nearer—was it up their alley? How could the people weigh and balance and judge? But public opinion begins to take shape; the outline forms; youth is less skeptically pat; from the vice of helpless waiting the will seizes at action; country is piled on country. The national point of view solidifies; there is less talk or perhaps more impatience with talk, as it becomes more vaporous; action alone will ease the need for expression.

We are now, I venture to suggest, at that stage. And, weary of talk, the national psychology will, if I am correct, constantly demand shorter cuts to reach the goal of national defense. The goal has not been defined, perhaps cannot be, in a world where the techniques of war are daily changing, and in a country, feeling its way in this strange flux, a country unused to *blitzkrieg* thinking, which will have to guess and blunder before it can decide and achieve. And how can we more than guess when we know not the mad direction which Hitler has drawn from his stars. Is a hemisphere involved, or a world, the world of an idea which we may have to defend, are defending now?

I do not hold that, to meet the threat of war and build our land into military power, the sacrifice of any fundamentally democratic basic assumption is necessary. I say this partly because we have seen England at war; England changing her leaders by her own will, refusing in her Parliament, which sits as in days of peace, to suspend the right of appeal in cases of court martial; her people freely speaking and freely thinking, unshielded from the danger of Nazi propaganda (listening to it, chuckling over it). Hyde Park not closed to soap boxes but practically deserted; an England where the liberal forces in politics seem more in command than before the war. Recently David Lloyd George, writing from London, for an American newspaper syndicate, vigorously attacked the British Government for considering measures suppressive of free speech, saying:

"All these threats of punishment and persecution are therefore an insult to a patriotic people.

"It is a ghastly error of judgment which betrays a complete ignorance of the real spirit of the nation to decree it down to acceptance of the principles of the Gestapo. The rulers of France pursued that method with disastrous consequences, and by that means disintegrated the nation and destroyed its morale. From the start of the campaign, whilst blazoning liberty on their banners they constantly pursued a policy of repression in their country. They ruthlessly and stupidly censored the press. Some journals were suspended. Freely elected members of Parliament were thrown into prison for no breach of law, for no act or word of treason to the state.

"Liberty is not merely an ideal to be achieved; it constitutes the most formidable weapon by which that ideal can be won or defended."

I also believe that the end may be used to shape the means, and that against the motivated fury of the totalitarian war machine can be matched a sustained passion which is fed on the more ancient human love of life and love of freedom.

In his speech on September 2, dedicating the Great Smoky Mountain National Park "to the free people of America," the President said:

"It is our pride that in our country men are free to differ with each other and with their government, and to follow their own thoughts and express them. We believe that the only whole man is a free man. And we believe that in the face of danger, the old spirit of the frontiersmen which is in our blood, will give us the courage and unity that we must have."

I spoke of the basic democratic assumptions. I do not conceive these to be many. They are, I think, often confused with the means which any country may use, in time of need, to achieve its ends. These means are not the ordinary processes of our faith, which are calculated to peaceful life, more casual and less directed. I realize, of course, the risks we run in thus changing our direction—in a word, the risks of war. They are very great. But if our collective will has faced the risks, has weighed them, and the determination to prepare for war is made, there can be no holding back because this way may be hateful set against our normal way of life.

What then are the basic things we must preserve? We shall, I think, not greatly disagree. Freedom of speech and of the press; our parliamentary system, so that whoever is to lead us is of our choice, and not raised by the will of force; the preservation of our system of law, under which men are judged by their peers, free of the shadow of the star chamber; the constitutional fabric under which we live. The Declaration of Rights, issued by the first Continental Congress in 1774 asserted that the English colonists had five inviolable rights—representative government, trial by jury, liberty of the person, easy tenure of land, and freedom of the press. These can be described in greater detail; others can be thought of, but will be seen to fit under the fundamentals I have mentioned. For so long as the people through their own Congress and their courts retain the right to withdraw the power they have granted, just so long the democratic way persists. In time of war, and even in time of preparation for war, the country must of necessity grant greater strength to the executive, a greater concentration of power to permit more flexibility and

*Address before the American Bar Association, at Philadelphia, September 11, 1940.

more speed. Of course, this is dangerous, perilous, if you will, to our free institutions: but risk is inherent to swift and vigorous action.

Freedom of speech, freedom of the press. Can they be preserved, and preserved without critically affecting the aims of our internal unity? The problem is particularly acute in America, where we have large minority groups, not only of those who belong to the nationalities of totalitarian states, but whose faith and outlook are not fused into a single national unity, as is England today.

It is perhaps well to remember that freedom of speech and of the press is not solely a development of English common law. Printing presses in the reign of Henry VII could be used only by license of the King, and this practice controlled the character of publications in the time of Elizabeth. The licensing acts did not expire till 1694; and prosecution for common law seditious libel, defined as "the intentional publication, without lawful excuse or justification, of written blame of any public man, or of the law, or of any institution established by law," continued till the passage of Lord Campbell's Act (6 and 7 Vict., c. 96) in 1843. The First Amendment to our Constitution was intended to guarantee a greater degree of freedom of speech, in which the common law of sedition had no place (*Grosjean v. American Press Co.*, 297 U. S. 233, 245; Patterson, *Free Speech and a Free Press*, 123 et seq.; Chaffee, *Freedom of Speech*, 1 et seq.; *United States v. Hudson*, 7 Cr. 31). However, the Sedition Act of 1798 (1 Stat. 596), adopted only seven years later, punished false, scandalous and malicious writings against the Government, published with intent to defame, or to incite sedition. The act was repudiated two years later in the defeat of the Federalist party; and similar legislative restriction was not revived for a hundred and seventeen years, and then when the country was at war. I refer to the Espionage Act of 1917 (June 15, 1917, c. 30, 40 Stat. 217). During the Civil War control of utterances considered objectionable was effected chiefly through army regulations and by withholding mailing privileges (Patterson, *Free Speech and a Free Press*, 140).

I shall but briefly touch on the World War period. The Espionage Act, effective only in war time, made it criminal to make false statements with the intent to interfere with the operation of the war; to cause insubordination; to obstruct recruiting; and, in the Amendment of May 16, 1918 (40 Stat. 553), to utter language intended to cause contempt for the United States Government, promote the cause of its enemies, urge curtailment of war production, or support the cause of a country at war with the United States. The Postmaster "on evidence satisfactory to him" could intercept mail deemed to violate the act (*Masses Publishing Co. v. Patten*, 245 Fed. 102 (CCA, 2d)). Publications in a foreign language we declared unlawful, unless translations were first furnished the postal authorities (Trading With the Enemy Act, Sec. 19, 40 Stat. 425). The President was authorized to censor communications with foreign countries (Trading With the Enemy Act, Sec. 3 (d), 40 Stat. 413). Censorship through the mails was broad, and, for all practical purposes, final (Chaffee, *Freedom of Speech*, 107; Deutsch. *Freedom of the Press and of the Mails*, 36 Mich. L. R. 703, 723, et seq.).

This legislation has been frequently construed. While the power limiting speech is far greater in war time, it may not be considered absolute (*Schenck v. United States*, 249 U. S. 47, 52; Hughes, *The Supreme Court*, 104; *The Federalist*, 23; *Frohwerk v. United States*, 249 U. S. 204, 208; *Herndon v. Lowry*, 301 U. S. 242, 258; Chaffee, *Freedom of Speech*, 32). In the *Schenck* case, Mr. Justice Holmes said:

"The character of every act depends upon the circumstances in which it is done. . . . When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right," but added, significantly, in the *Frohwerk* case, a week later: "We do not lose our right to condemn either measures or men because the Country is at war."

Justice Roberts, only three years ago, in the *Herndon* case, said: "The limitation upon individual liberty must have appropriate relation to the safety of the state."

Many state statutes were adopted supplementing the Federal law, dealing with propaganda and aimed at suppressing undesirable utterances, or prohibiting red flags and other insignia. Very general language has been sustained by the United States Supreme Court. In *Gilbert v. State of Minnesota* (254 U. S. 325) the state statute made it a criminal offense for anyone to speak, teach or advocate that citizens should not aid or assist the United States in carrying on the World War or discourage enlistment. The defendant was indicted for writing, in war time: "We are stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. I tell you, if they conscripted wealth like they conscripted men, this war would not last over forty-eight hours. . . ." This might have been said yesterday; and it is rather startling to think that such an utterance might now lawfully be made criminal if the psychology of preparedness for war led the court to broaden the definition of the national emergency. The Supreme Court sustained the statute, Holmes concurring in the result, Brandeis dissenting on the ground that the state had exceeded its powers, which did not primarily deal with the organization of an army; McKenna, speaking for the majority, holding that the state had the right to assist the Federal Government to maintain the "morale, spirit and determination" of the people. Broad words these, forming a generous frame for suppression; and because they were sustained during a war does not necessarily exclude the rationale of their application to circumstances where propaganda has become far more subtle, more effective, and infinitely less capable of exact definition.

Not that propaganda was not recognized and dealt with during the World War. The Committee on Public Information, headed by George Creel, was established by executive order on April 14, 1917 (Bruntz, *Allied Propaganda and the Collapse of German Morale in* 1918, Public Opinion Quarterly, Jan. 1938; Mock and Larson, *Words That Won the War*). Information about war activity was collected by the committee and distributed on a huge scale; seventy-five million copies of thirty odd booklets were distributed in several languages; seventy-four thousand speakers (Four Minute Men) made 755,190 speeches; the foreign language press was served with selected articles; millions of dollars of free advertising was secured; and information and syndicated press service poured out articles; moving pictures were effectively used; 200,000 stereoptican slides were distributed; a special service was built up for the foreign press; and 700 pictures of military activities were censored a day (Creel, *How We Advertised America*)!

These services cost the taxpayers net $2,086,883;

and were discontinued within twenty-four hours after the Armistice.

Dr. Paul Joseph Goebbels is the head of Hitler's Ministry of Propaganda and Public Enlightenment, with "but one object, to conquer the masses. Every means that furthers this aim is good. Every means that hinders it is bad." On his staff are 25,000 full time workers. He spent $100,000,000 a year prior to the outbreak of the War (Lavine & Wechsler, *War Propaganda and the United States*, 36, 169, 247).

It is difficult to realize, when we consider how little has been done about it, that for nine years the problem of the control of subversive propaganda in the United States has been considered. The Industrial Mobilization Plan prepared by the War Department in 1931 provided for a Director of Public Relations, without power of censorship, which was, however, added by the 1933 plan. But the 1936 plan, chiefly as a result of criticism by the Nye Committee, omitted any reference to war-time publicity or censorship (Industrial Mobilization Plan, 1936, 45). In 1938 Congress provided for the registration of foreign agents (52 Stat. 631, amended, 53 Stat. 1244), a not very effective measure of control, largely on account of the difficulty of proving agency. There is at present pending an amendment greatly to increase the information to be filed. As of May 1, 1940, approximately four hundred agents were registered with the State Department under the Act, not all of them, of course, engaged in the dissemination of foreign political propaganda. In the last six years several states have passed legislation calculated to suppress subversive propaganda.

The immediate problem is to meet in peace time, the flood of subversive propaganda directed to break down our faith in our own institutions; and perhaps, too, in revising our traditional concepts of war and peace in order effectively to delineate our plan of action. The problem is entirely different from what it was during the World War. Democratic institutions are evoked to protect an attack against those same institutions. Censorship and punishment are clumsy weapons to cope with the doctrine of appeasement, illusory promise of economic betterment, the praise of successful might, the pretended doubt as to whether, after all, democracies can be efficient. "What is war," said Hitler to Hermann Rauschning, President of the Danzig Senate, in 1933, "but cunning, deception, delusion, attacks and surprise? What is the object of war? To make the enemy capitulate. Why should I demoralize him by military means if I can do so better and more cheaply in other ways?" (Lavine & Wechsler, *War Propaganda and the United States*, 36.)

Propaganda and other problems of national defense were carefully considered by the two-day meeting between State and Federal officials in Washington last month, called by The Governors' Conference, The Council of State Governments, The National Association of Attorneys General, and The Interstate Commission on Crime. Practically all the states were represented; the five sections, studying the problems separately, were unanimous in their recommendations to the Conference, which unanimously adopted them. As to our subject, these suggestions, made by Section 2, headed by Governor Dixon of Alabama and Governor Cochran of Nebraska seem to me significant.

1. "In view of the Alien Registration Act of 1940 which deals with sedition against both federal and state governments and in view of the national character of sedition, no state acts on sedition are considered necessary at this time."

2. "The Federal Government should make a careful and continuing study of foreign propaganda in the United States. To this end it is recommended that the Federal Government provide an agency devoted to propaganda analysis."

3. "Committees of private citizens should be stimulated within the several states to provide the utmost possible dissemination of American aims and ideals through the press, radio and other media of publicity."

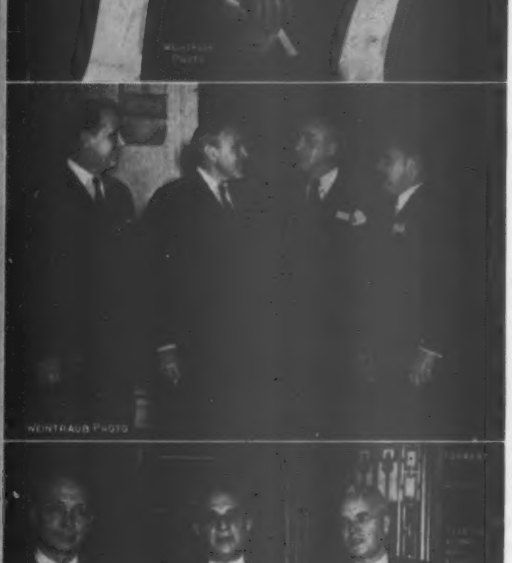
4. "The publication and dissemination of all papers, pamphlets, leaflets and other printed matter having for its purpose the undermining of the American principles of government is hereby condemned. It is recommended that a thorough study of this problem be made by both the federal and state governments, cooperating with the legitimate press of the country, to the end that appropriate legislation be enacted requiring those responsible for such practices to register and disclose the governments or persons in whose behalf or for whom they are acting as well as the source of any financial aid received for such purposes."

It is interesting to note that the whole attack on the problem is from the angle of publicity, bringing the anonymous and covert into the open, rather than suppression. And it is particularly significant that the states, meeting with the Federal Government, should recommend a Federal bureau of propaganda analysis. Another section, headed by Governor Cooper of Tennessee, and Attorney General Staples of Virginia, noted "that there is at present no systematic effort being made to organize or crystallize public opinion for defense purposes." This section recommended "that the state governments review their respective educational systems to the end that no subversive propaganda be allowed to be disseminated through the state school system and on the contrary that thorough understanding of the foundation principles of our democracy be inculcated and self-discipline and self-sacrifice for these principles be encouraged."

Liberals will be found to whom doubtless the analysis of foreign propaganda by their government will seem mistaken; but not I think to the temper of the country. A beginning has been made by such organizations as the Institute of Public Affairs. But is there any reason why we should not know, exactly and exhaustively what our thousand and forty-seven foreign language newspapers, and our sixty-five radio stations broadcasting in foreign languages are saying? Doubtless most of it is innocent enough, some confused and misinformed, a small fraction disloyal. But do we know? During prohibition a sign in Chinese read "Alcohol sold here." But it was not disturbed, nor its owner raided, because policemen do not read Chinese.

The dissemination of American ideals—the positive end of the problem, with infinite possibility for creative education—is, I think, different. I should hardly want to see the Government, in time of peace, undertake such a task. That is essentially for private hands. The Government conceivably might co-ordinate the work, supply information, make suggestions. But one hesitates to advocate its taking any further part in a program which is, after all, essentially educational.

In the long run the difficulty will not be in securing adequate legislation but in raising a wise and effective administration of the law. We must have a knowledge of the facts. We must have unity of action—federal and state—in the dominant field of public opinion. But we must never forget the nature of the freedom we are protecting.



BOARD OF GOVERNORS' PROCEEDINGS

UNDER the Constitution of the Association the Board of Governors has a two-fold jurisdiction:

A. During the interval between annual meetings of the Association and between the mid-winter meetings of the House of Delegates, the Board of Governors acts as a sort of Board of Directors of the Association with certain defined powers of action.

B. During the annual meeting, the Board of Governors operates as a sort of executive committee of the House of Delegates and thereby does much of the work of that body and saves much of its time.

Preliminary Meetings

At Philadelphia the Board of Governors held several sessions the week before the opening of the annual meeting. Numerous matters required consideration before the formal opening of the annual Convention. A large part of the time and attention of the Board at those preliminary meetings was devoted (pursuant to the Constitution) to considering reports of Committees and of sections. Action of the Board on these matters was reported to the House of Delegates, as the Constitution requires, and final action thereon appears in the records of the House.

Suspension of Member

One noteworthy item in this connection was the Board's approval of the report of the Committee on Professional Ethics and Grievances which recommended that Harry Le Roy Schulman, of Brooklyn, be publicly censured and suspended from membership in the Association for a period of two years. Mr. Schulman was charged with the solicitation of professional employment in violation of Canon 27 of the Canons of Professional Ethics.

1941 Annual Meeting at Indianapolis

Following the conclusion of the annual Convention, the Board of Governors, as is customary, met at Philadelphia, on September 14th, to consider a number of important matters.

One of the noteworthy matters decided by the Board was to recommend that the next annual Convention of the Association be held at Indianapolis, and the opening date was fixed as September 29, 1941.

Mid-Winter Meeting House of Delegates

The House of Delegates had referred to the Board of Governors a resolution concerning a mid-winter meeting of the House. The Board decided to recommend that a mid-winter meeting should be held; but the selection of the time and place was deferred by the Board, pending a report from its sub-committee on Administration.

Uniform Simultaneous Death Act

The House of Delegates had approved the so-called Uniform Simultaneous Death Act (presented by the Conference of Commissioners on Uniform Laws) subject to final approval by the Board of Governors. The Board took action giving such approval.

Committee on Legal History Disapproved

A resolution was presented to the Assembly asking for the creation of a Committee on Legal History, whose purpose would be to stimulate and assist in the collection and preservation of legal historical data in various parts of the country. The resolution was referred to the House of Delegates and by that body was referred to the Board of Governors. The Board decided that the proposed committee should not be appointed at this time.

Top to bottom: Joseph W. Henderson, and Mrs. James Rawle, II, of Philadelphia; Charles A. Beardsley, Mr. Justice Roberts and George Wharton Pepper; Douglas Arant, Birmingham, Ala., Grenville Clark, New York City, Burton Musser, Salt Lake City, and Osmer C. Fitts, Brattleboro, Vt.; former President Guy A. Thompson, St. Louis, Mo., and friends; Roscoe Pound, Charles A. Beardsley, and Leonard W. Brockington, K. C. (speaking) and George Wharton Pepper of Philadelphia.

Special Committee on Judicial Administration

In conformity with the action of the House of Delegates, the Board of Governors decided to authorize the President to appoint a special cooperating committee to coordinate and further the work of the Section of Judicial Administration. It was directed that the Committee should not exceed seven in number but that it should include the chairmen of the Sections of Bar Organization Activities, Criminal Law and Judicial Administration, the President of the American Judicature Society and the President of the National Conference of Judicial Councils. By resolution, the Board directed the President to inform the chairman of the Section of Bar Organization Activities that the members of the Board of Governors in circuits embraced by regional meetings to be conducted by that Section during the year would assist in such meetings.

Business of the Association

The Board of Governors under the Constitution and by tradition, is the executive agency of the Association. At the meeting on September 14th the Board gave extended consideration to numerous administrative and financial problems of the Association, for the coming year. A budget for the Association for the year 1940-41 was approved.

Secretary's Office

Olive G. Ricker was re-elected Executive Secretary of the Association and Joseph D. Stecher, of the Toledo bar, was re-elected Assistant Secretary.

Laurence W. DeMuth New Adviser to Section on Legal Education and Admission to the Bar

AT the Philadelphia meeting Mr. Charles E. Dunbar, Jr., of Louisiana, Chairman of the Section on Legal Education and Admission to the Bar, announced that the Section had selected a new Adviser, Mr. Laurence W. DeMuth of Boulder, Colo. Mr. DeMuth will serve the Section as Adviser on a part-time basis, and will continue to live in Colorado. The Section and the Association are to be complimented on securing the services of an Adviser with the training and wide experience in Legal Education which Mr. DeMuth possesses.

Mr. Will Shafroth (who became assistant to Mr. Henry Chandler, Director of the Administrative Office of the Federal Courts, in January 1940) was the Adviser of the Section from 1929 to the end of 1939. His splendid record in that position for over 10 years is known to all lawyers interested in Legal Education.

The Report of the Council was only summarized in Philadelphia by Chairman Dunbar. He stated that the full Report would be printed in the Annual Proceedings of the ABA and urged all interested persons to read the full report.

Commercial Law Journal

THE ABA JOURNAL acknowledges, with appreciation, the receipt of the September 1940 issue of Commercial Law Journal containing "Proceedings of the Forty-sixth Annual Convention" of the Commercial Law League of America. We compliment the Editors and the League on their excellent journal. In our September issue we commented on the annual Convention of the League, recently held in Chicago, and noted the fact that Harold B. Doyle (of the Youngstown, Ohio Bar) the new President and Carroll A. Teller (of the Chicago Bar) the retiring President, were both active members of the ABA. We noted also that President Jacob M. Lashly of the ABA was honored as one of the principal speakers at the Law League's Convention. Mr. Lashly's address is printed in full in the September issue of the Commercial Law Journal.

Weintraub Photo

Top to bottom: Incoming President Lashly has an informal chat with outgoing President Beardsley; D. L. McCarthy, President, Canadian Bar Association; Mrs. Jacob M. Lashly; Harry S. Knight, Secretary of the ABA; a typical scene at the registration desk.

AWARD TO DEAN POUND

ONE of the outstanding events at the Annual Banquet and indeed of the entire convention proceedings, was the award to Roscoe Pound, Dean Emeritus of Harvard Law School, of the American Bar Association Medal for Conspicuous Service in the cause of American Jurisprudence. A transcript of the proceedings is here given:

PRESIDENT BEARDSLEY: The next number on this program is one that would have come earlier except for the plan for broadcasting Mr. Brockington's address. It is the presentation of the American Bar Association Medal. The medal will be presented by one of our members, who, although still a young man, has been a member of the Association for a quarter of a century. He has also had enough spare time and enough energy not only to practice law, but also to teach law, to write books and to serve his country as an officer in the Army and as Assistant Secretary of State. During the last five years he has been in comparative retirement as Master of Timothy Dwight College, and Professor of Law and Government at Yale. I have the pleasure of presenting to you at this time, Mr. James Grafton Rogers. (Applause.)

MR. JAMES GRAFTON ROGERS: My part tonight, Mr. President, is relatively brief. I remove from obscurity for the moment to emerge with a promise that the covering over me is not deep. Mr. President, a distinguished and colorful member of this Association, George Rector Peek, some years ago was called upon to unveil in Chicago a statue of General Logan. General Logan, as some of the older men here may remember, was a controversial character after the Civil War, and the subject was not unclouded with dispute. Mr. Peek, on the waterfront in Chicago, made an extended oration in his most colorful style, and after he got through with it, one of his friends came up and said, "George, you have said a great deal about Chicago in your remarks, and about the statue, but you did not say much about General Logan." And he replied: "I was unveiling the statue; I was not unveiling General Logan."

I am somewhat in that position. I can present a medal, but I cannot present the recipient, because he is known to you all. He has earned from you and from me the rewards of this Association, and his name is a by-word in the office and in the home of the American Lawyer. He is Roscoe Pound!

The American Bar Association Medal for Conspicuous Service in the cause of American jurisprudence was established at the fiftieth anniversary of the founding of this Association as an echo of an old and somewhat humorous episode. The idea that the lawyers of America might give to some member of the profession each year a medal in recognition of services to their cause and to their purposes was one of the earliest thoughts connected with this organization. Simeon Baldwin, from whose initiative this organization sprang, had it in mind when the Bar of Connecticut passed a resolution nearly sixty years ago, calling for the organization of a National Association of American lawyers. But it was not until the Nineties that there was any effort to establish as an institution, a reward for service to the Bar, to be granted by the lawyers.

Then, on its first adventure, it got into a quarrel. That fiery warrior, David Dudley Field, was voted by part of the Bar Association the award in recognition of his services, conspicuous and notable as we now recognize them, in the reform of judicial procedure. But there was another faction which disagreed with Field, and the consequence was that in the first year the Bar Association voted a medal, they had to award it both to David Dudley Field and to Lord Selborne of England, and then abolish the medal.

Years later, in our maturity, when we felt surer of the processes of the Bar, the committee which was planning the fiftieth anniversary of this Association a few years ago proposed the reestablishment of a medal for distinguished service, and tonight we meet in the course of events to bestow it once more.

It has gone to Samuel Williston. It has gone to Elihu Root, now departed from these halls. It has gone to Oliver Wendell Holmes. It has gone to John Wigmore. It has gone to George Wickersham. It has gone to Herbert Harley. Last year it went to Major Tolman, still in loving and devoted service to this organization.

The man who carries it with him this year, I am proud to join in honoring. He was born seventy years ago this fall on the plains at Lincoln, Nebraska. The son of a lawyer, he turned at first to botany, showing in his first instincts that versatility, which has so marked the career of Roscoe Pound since first he attracted American attention in his book on "The Botany of Nebraska." I am told it has gone through more than one edition and still remains a standard textbook in that field.

Practicing botany for a little while and gathering about him the first increments of that multitudinous mass of degrees which now garment his shoulders, he moved into the law. He practiced law, served as a Commissioner of the Supreme Court of Nebraska, began to teach law, became Dean of Law at the University of Nebraska, in Lincoln, moved to the University of Chicago Law School, and then to Harvard, and for twenty years served as Dean of the Law School of that preëminent University.

His services to the legal profession are multitudinous in the years that have passed, and yet it is not alone for his services that we admire and love him. I remember myself, if you will permit a personal reference, the first time that I met him. Law school and the practice of law had left me with few intimations of the broader and abstract ideas about law. I had been hungry for what men had written and said about law, about its meaning and its origins, its sources and its aims, and I had found in the writings of Roscoe Pound one doorway after another which opened to me the long and old thoughts of mankind in regard to law. Having read these difficult and abstract thoughts, one day I stumbled into a meeting where Roscoe Pound was present. I found him standing by a piano with John Wigmore, working a three-finger accompaniment on the piano, singing an old song. There is a Pound Wise and a Pound Foolish, and we are grateful for them both.

Some of you will remember Roscoe Pound on the Berengeria in 1924 when he was competing with the fog horn, and finally gave up. Some of you will re-

member Roscoe Pound years ago in my own house in Denver during the American Bar Association meeting, when, as I will recall to my last hour's memory, he picked down from the shelves Who's Who in America, and there burlesqued and disciplined and criticised our biographies in Who's Who.

On the more serious side, Roscoe Pound has been a contributor to so many activities and in so many directions to the American Bar, contributions so intimately known to all of you, that I need not repeat them. Let me say only this: My judgment is that as he represented the frontier in his boyhood, he has represented to no small degree the frontier in the development of American thought in Jurisprudence. His mind has always been open and liberal and generous to new ideas and to new developments. But his real interest has always been in the kind of thing of which my brother Brockington has spoken; the fact that the law is old, that the law goes on through war and peace, through turmoil and political conflict and political differences; that after all, the great solutions of the law lie in its great solutions of society; lie in the processes of the law, and that deep in our hearts everywhere are the fundamental bases on which the law is built.

Into these paths he led me first. Into those paths his books, as the Spirit of the Common Law, have continued year by year to lead thousands of students; to give them more and more prospective, more and more breadth of view about what it all concerns, more and more insight into the deeper reaches of the law beyond its mere surface technique.

Much of our thoughts about the law concern the waves on the surface of the ocean; the currents, the weather, the consequences of the great flood concern us very little, because we are mariners on a sea on which the surface mostly affects our lives.

Roscoe Pound has been primarily concerned with the deeper currents and the broad developments and the oceanic developments of wide scope. His services to the Bar run in many directions, but they seem to me likely to promise that in the reach of the years there are few men in our generation whose names are so probably to be known to our grandsons and our great grandsons as the man to whom we grant this medal tonight.

Dean Pound, with this medal goes the affection, the admiration and the companionship of the American Bar for a loyal and eager and friendly servant. For more than fifty years passes by as we have watched your development and the years creep on you.

[Presentation of Medal as the assemblage arose and applauded].

PRESIDENT BEARDSLEY: Dean Pound, we are very glad to have a few words from you.

Dean Roscoe Pound

Mr. President, Ladies and Gentlemen: When Sam Weller wrote his love letter to Mary, he began by saying that he felt completely "circumwented" in writing to her. At that point, his father, who was more or less superintending the writing of the letter interposed that the word should be "circumscribed."

"No," said Sam, "it is not that 'circumscribed' is not a proper word, but that 'circumwented' is more tender."

Now, Mr. President, I must confess that I feel in the Wellerian sense, "completely circumwented," endeavoring to respond in the condition of being completely overwhelmed by pride and appreciation and gratitude.

When a collective entity has done great things, the lively imagination and dramatic and artistic instinct of the Frenchman lead him to decorate the entity itself by an appropriate symbolic ceremony. Thus a city or a commune may be given a cross or an order exactly as such a decoration is ordinarily bestowed upon an individual. The Anglo-American hard-headed instinct for facts does not admit of such thing. Mr. Dooley pictured President McKinley sending a congratulatory telegram to himself at the end of the Spanish-American War, but we could hardly expect the American Bar Association to issue a laudatory diploma to itself nor to affix a medal to a chain to be worn by the President of the Association for the time being. Happily for those of us who have long been active in its work it can recognize its own achievements by bestowing the medal on us.

Indeed, the American Bar Association has every justification for decorating itself. The making of American law out of the seventeenth-century feudal property law and eighteenth-century formal over-refined procedure which we had inherited was the work of judges and of lawyers arguing before them rather than of legislatures. When we contrast the unity and order of the substantive law in our forty-eight states with the diversity in the organization of courts and the chaotic hypertrophy of procedure as it stood a generation ago, we may take pride in reflecting that the substantive law was the work of judges and of lawyers arguing before them, while organization of courts was the work of constitution makers and legislators, and procedure had come to be the work of legislators also. Even more we may take a great and legitimate pride in reflecting that the legislation which has helped to unify our commercial law had its inception in this Association; that the improvements which have been putting procedure on a better basis everywhere have been the work of bar associations; and that the initiative and much of the momentum in such strokes for more effective administration of justice as authoritative formulation of professional ethics, regulation of procedure by rules of court, the organization of the bar, and the judicial council have come from this Association or its subsidiaries and affiliates. The greatest single achievement for enabling our courts to do effectively their job of administering justice has been inducing the legislatures to keep their hands off and allowing the courts to prescribe the course of proceedings before them by rules of court, as they did originally at common law.

What is said to the recipient of a medal on such occasions as this is not unlikely to take the form of something very like an obituary. But I am sure my dear friend Jim Rogers is not yet ready to pronounce one for me, and I am not prepared to formulate an epitaph for myself. There is much more to be done to make our American administration of justice what it should be in the twentieth century, and, if for no other reason, I do not feel ripe for an obituary. Yet whatever is achieved in that direction we may be confident will be in largest part the work of this Association rather than of any one man.

Even more than the just pride one must feel at the honor bestowed upon him on such an occasion is that which comes to him from the recognition that he has done something toward helping to make straight the paths of justice. If I may use the words of a recently departed master of our law, so venerable, so majestic is this living temple of justice, this immemorial yet ever freshly growing fabric of our common law, that the least of us is proud who may point to so much as one stone thereof and say the work of my hands is there.

London Letter

By H. A. C. Sturgess

Librarian and Keeper of the Records, Middle Temple

Editorial Note

Our London Letter in this issue is both interesting and timely. American lawyers (particularly those who took part in the Great War) will find reminiscent thoughts running through their heads as they read about the effect of the war upon English courts and lawyers. It is particularly noteworthy that our London Letter is written by one of the Chief Officers of one of the famous Inns of Court. Mr. Sturgess, the writer of the Letter, sent a personal note which we think our members will read with interest. He says:

August 12th, 1940

Managing Editor
American Bar Association Journal.
Dear Mr. Lavery:

I have pleasure in enclosing the "London Letter" for the October number of the Journal.

I regret that I have been obliged to send it in MS. instead of the usual typescript, but my assistant librarian, who did all the typing here, has joined the air force and my writing is a good deal faster than my typewriting. I believe your compositor will be able to read it quite well.

Sincerely yours,
H. A. C. Sturgess.

My sincere congratulations upon your appointment as Managing Editor. I hope you will enjoy the work.

H.A.C.S.

Middle Temple Gardens

THE Middle Temple Gardens have been justly famed for the magnificent flowers which have been grown there for many generations. Daffodils, tulips, hyacinths, geraniums, chrysanthemums and many others in their due season have provided a scene of beauty to delight the eyes of all who wander into Garden Court or Fountain Court to seek relaxation and relief from the noise of the Strand or Fleet Street. But the times in which we live have brought changes even here and, instead of flowers, the passer-by may now see beans, cabbages, marrows, celery, tomatoes and other vegetables, which have appeared in response to the injunction to "dig for victory." The Benchers of the Inn have handed over the flower beds to residents in the Temple and some of the staff, and food production is proceeding with enthusiasm. The one rose-bed which still remains now has a border of beans.

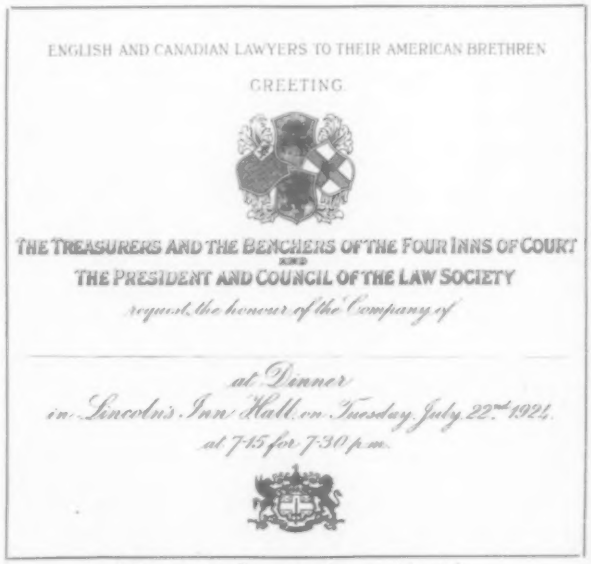
Cultivation of the gardens of the Inns of Court must have varied considerably from time to time, but one must go a long way back for any record of vegetables. There is not much information available as to the early days of the Middle Temple gardens, but in the Inner Temple Records there is mention, in the year 1614, of a kitchen garden, and between the years 1690 and 1698 there are references to fruit trees—plum, peach, nectron, cherry and orange trees. At Gray's Inn, on the 11th February, 1621, it was ordered that "from henceforth the gardenor is to furnishe the House with all manor of herbs, roots and sallets upon Grand Dayes, Reading Weekes, and all other times in the yeare as need shall requier to furnishe the kitchine," and six years later, when the gardner petitioned for an allowance for soil for the kitchen garden, it was ordered that "he shall have noe allowance, butt shall att his owne charge provide earbes and soyle for the kitchine garden which if he shall refuse another shallbe chosen in his place which will performe the same." Nearly five hundred years ago (1446) Lincoln's Inn let part of their garden to one Richard Benet, their cook, on the understanding that "all fruits, to wit, apples, pears, divers kinds of nuts and plums, being reserved to the Society; he finding all herbs required by the Inn."

Temple Church Railings

The joint choir committee of the Inner and Middle Temples, who are responsible for all matters connected with the Temple Church, offered the heavy iron railings on the south side of the Church as a contribution to the country's effort to collect scrap iron for war purposes. These railings have been duly removed, and it is to be hoped that, after the war, no others will be put in their place. It is astonishing in what measure their absence contributes to the beauty and dignity of the Church. The fine stone buttresses can now be seen in all their noble proportions and it is, in fact, difficult to understand why railings were ever placed on that side of the Church. They were only a little less disfiguring than the shops which were formerly built against the Church and removed about the year 1825.

Long Vacation

As another indication of Britain's war effort it has been decided by the Council of Judges of the Supreme Court, with the concurrence of the Lord Chancellor, to cancel the long vacation this year. The vacation would normally last from the 1st August until the 11th October, but it was felt that, with the whole country work-



ENGLISH AND CANADIAN LAWYERS TO THEIR AMERICAN BRETHREN

GREETING

THE TREASURERS AND THE BENCHERS OF THE FOUR INNS OF COURT
AND
THE PRESIDENT AND COUNCIL OF THE LAW SOCIETY

request the honour of the Company of

at Dinner
in Lincoln's Inn Hall on Tuesday July 22nd 1924
at 7·45 for 7·30 p.m.

[*From the* Journal's *scrapbook*]

ing at high pressure, it was desirable for the Courts to be open "not merely to dispose of urgent business, but in order that all parties who so desire may have their cases tried when they are ready." The arrangements made, so far as London is concerned, are that in the Chancery Division one judge will sit daily, if necessary, for all classes of business usually disposed of by a judge. In the Probate, Divorce and Admiralty Division two judges will sit from Monday to Friday of each week, for all classes of business; and in the King's Bench Division long and short non-jury lists will continue to be published weekly and actions drawn therefrom for trial. Actions in commercial and short cause lists will also be taken. It is believed that this is the first time in history that the judges have forfeited their usual summer holiday.

Central Criminal Court Economy

As a war time economy the London City Corporation has suspended the custom of the Judges, Lord Mayor, Sheriffs and Aldermen carrying posies of cottage flowers at the Central Criminal Court during the summer months and strewing the docks of the Courts with sweet herbs. This is an old custom, dating back to the time when Newgate Prison adjoined the Courts, and was originally designed to counteract the noisome smells emanating therefrom. Such was the condition of that prison that, in 1749 there was a virulent outbreak of "gaol fever," now known as typhoid, which resulted in the death of the Lord Mayor (Sir Samuel Pennant), two judges, an alderman and many other persons. The suspension of the custom will save the City Corporation no less than £3:5:0. per day

Society of Comparative Legislation

The Society of Comparative Legislation is continuing its activities as it did in the Great War of 1914-1918. Between those years it not only celebrated its coming of age but it also issued a consolidated index to the first fifteen volumes of the Journal. It would seem that war merely serves to increase the vigor of this Society as it has now published a useful Consolidated Index to the first twenty volumes of the current series of the Journal, covering the years 1919 to 1938. At the same time, in issuing the new number, the Honorary Secretaries offer to assist subscribers in securing sets of the publication, and in particular they have made arrangements for the first two volumes of the original series, which now have a considerable market value, to be reproduced by the micro-film process. This is of especial interest as it is the first occasion upon which any journal in the United Kingdom has offered to fill a gap in a manner which is becoming increasingly familiar in the United States of America. These two volumes have long since been out of print and, in fact, the whole series of the Journal has for many years possessed a quite unusual market value among periodical publications. It is a testimony of its worth and also to the value of the work of the Society as being the only one in the sphere of law which is imperial in its scope. At the same time attention is given to the legislation of the United States, and Mr. Lucius Crane contributes to the new number a survey of the Federal Legislation. I understand that in the next number of the Journal to be published full attention will be given to the admirable State Law Digest Reports, which have been published by the Library of Congress to show the changes in the State laws during the years 1935-1938. The present time would seem to provide a favorable opportunity for new subscribers, and I learn that Mr. John W. Davis, a former ambassador of the United States to the Court of St. James's and an Honorary Bencher of the Middle Temple, is among those who have recently recognized the fact and become members of the Society. It is interesting to recall that the resolution of 1894, which was the origin of the Society and which was moved by Lord Herschell, then Lord Chancellor, was in the following form: "That it is expedient to establish a Society of Comparative Legislation, with the object of promoting knowledge of the course of legislation in different countries, more particularly in the several parts of Her Majesty's Dominions, and in the United States."

Truck Act

In the April number of the Journal I referred to the case of *Pratt v. Cook, Son & Company (St. Paul's) Ltd.*, which was an action brought under the provisions of the Truck Act, 1 & 2 Will. iv. C. 37, and in which the plaintiff recovered a sum of nearly £400, representing the value of meals supplied by his employers over a long period of years. It was alleged by the plaintiff that all payments other than in coin of the realm were illegal, and on this contention he succeeded. It seems that the judgment of the House of Lords established the fact that a workman might legally be employed by written agreement at a wage of, say, 60/— from which 10/— per week was to be deducted in respect of meals provided, but that it was illegal to agree with the workman for a wage 50/— plus meals to the value of 10s/—. The effect on the workman is the same but the contract in Pratt's case was in the form held to be illegal. Other claims had been set down for hearing and it is believed that still more were contemplated which, if pursued, would tend to upset the good relations existing between employers and employed. To deal with the situation thus created a short Act—the Truck Act, 1940—has been passed, by which it is provided that no action or other legal proceedings shall be instituted under section 4 of the Truck Act of 1831 for the payment in cash of remuneration which was, in fact, provided in the form of food or some other thing. Any proceedings instituted before the passing of the Act will be discharged and made void, subject to such order as to costs as the Court or a judge thereof may think fit to make. A saving clause for the benefit of the worker has been included which provides that a contract of employment shall not be held to be null and void for other purposes if it is illegal only for purposes of the Truck Act. As stated in the House of Commons during the passage of the Act it was "feared that a situation might arise in which, if a contract of employment is null and void under the Truck Acts, that might vitiate the contract for other purposes, such as the payment of contributions under the Contributory Pensions Acts. It would obviously be most unfortunate if a workman were to be deprived of his right to an old age pension because his contract of employment were held to be null and void for Truck Act purposes."

Special War Zone Courts

The Emergency Powers (Defense) (No. 2) Act, recently passed, gave rise to much discussion in its progress through the House of Commons. Its object is to provide for the setting up of special courts where, owing to military developments, the ordinary machinery

of justice can no longer fully meet the requirements of the case. The Bill, as first introduced into the House, created the impression in some quarters that it was the intention of the Government to establish Courts Martial or some other military tribunal for the trial and punishment of civilian offenders; but in its final form the fact that these special courts are not to be Courts Martial is particularly emphasized in the first section of the Act. Again, in its first form it was desired to "make provision for the apprehension and punishment of offenders . . . and for the proceedings of such Courts being subject to no review or to such review as may be provided for," but the opposition to the denial of the right to appeal caused the deletion of the words "to no revision or." In the House of Lords this part was further amended so that it now provides that such proceedings shall be reviewed by not less than three persons who hold or have held high judicial office, in all cases in which sentence of death is passed, and in such other circumstances as may be provided by the Regulations. The Act is so worded that it leaves all procedure under it to be provided for by Regulations, and it was this fact which caused a good deal of misgiving. Some indication of the scope of the proposed Regulations was given and, in view of the fact that the Courts are empowered to impose any sentence authorized by law, including the death sentence for any offense for which the law authorizes capital punishment, it is perhaps comforting to note that the Home Secretary made it clear that it is proposed that suitable men of judicial rank or qualified to exercise high judicial office should be selected by the Lord Chancellor and assigned to act as Presidents of special War Zone Courts if and when an area is declared to be a war zone area. These Presidents will be empowered to hold their Courts in such places in the areas so declared as will be most convenient. In settling where the Courts will sit they will act in consultation with the military commander. Of necessity there can be no juries and it is, therefore, proposed that two other members should sit with the President of each Court to act in an advisory capacity only. These advisory members of the Court will, it is expected, be selected from the local justices of the peace in each area.

BOOK REVIEWS

THE DANGER OF BEING A GENTLEMAN AND OTHER ESSAYS, by Harold J. Laski. 1940. New York: The Viking Press. Pp. 270. Published at the present time the eight essays in this volume have an antique flavor. The question today is not as to how much the British judicial system might gain from a study of the courts of Russia, how much more efficient the British local councils might be made, or how much less slowly the American people ought to make haste in transferring power from the exploiters of labor to the exploiters of the labor movement. The question today is the brute question of survival.

But one may doubt whether, even from a strictly intrinsic standpoint, these essays are not more distinguished for intellectual vivacity and literary charm than for scientific soundness. In the second essay of the series, *On the Study of Politics* (an inaugural lecture for the Chair of Political Science at the London School of Economics), Professor Laski advocates the historical method. His own writings do not emanate from the historical school. He is fundamentally and incurably a moralist, a utopian and a propagandist. In the historical method institutions are studied in the course of their development in time. The historical picture, taking modern civilization as a whole, is optimistic. It shows with what great effort and with how much real success the structure of modern civilization, and of Anglo-American civilization in particular, has been reared from a primitive barbarism. Starting with a very summary and Marxianly haphazard picture of things as they are, Professor Laski compares it with an ideal picture that he has in his mind. His outlook therefore is pessimistic; for, however hopeful from the standpoint of the backward glance things as they are might seem, they are never as satisfactory as they might be conceived by the dreamer dreaming of the abolition of poverty or of war or of the establishment of a *civitas maxima* based on brotherly love. On this pessimism then we are of course free to base Marxian interpretations of history or any other interpretations we may prefer—on the way to recovery, doubtless, from a youthful Marxism, Professor Laski shuttles back and forth between a number of them. And why, indeed, Professor Laski should see the necessity of critical editions of all the masterpieces of political thought, when the major premises of his own theories can be obtained more directly from the editorial pages of any one cent Socialist daily, is not so clear. The answer probably is that Professor Laski thinks of politics primarily as art and of political science primarily as literature. He studies institutions and events largely as sources for epigram and literary finesses and the monuments of political thought as pretexts for cryptic allusions and erudite embellishments.

The essays taken one by one have the merits and the limitations of the attitudes just described. In the essay on *The Danger of Being a Gentleman* one finds some acute and objective observations on the foibles of the British ruling class. But these traits are organized rather for their value as humor than as samples of the characteristics and utilities of ruling classes in general, and the historical background that differentiates the British gentleman from the Russian prince of old, from the French or Italian aristocrat or even from the American Rotarian, is left unexplored. Professor Laski's major grievance against the British gentleman is the latter's indifference to the commandments of the great god Rapid Change, and for that heresy he predicts the punishment of swift extinction. However, predicting the collapse of the British gentleman from one cause or another has been one of the permanent pastimes of political writers for three centuries or more. During that period the British gentleman has survived three monarchical revolutions, an industrial revolution, seventeen years of Napoleonic wars, a century and a half of social agitation and one World War. If he succumbs today he will fall like the Athenian gentleman of old before a *force majeure* emanating from a foreign

power, and the only epitaph that political science might write over his tomb would be an appreciation of the fact that, numbering the few thousand that in the course of the centuries he has numbered, he has contributed so lavishly to civilizing so many millions of barbarians to the point where they are at least able to overthrow him.

Forever coddling his utopia, Professor Laski ignores some basic concepts of political science, the lack of which debilitates any discussion of political institutions or social trends. The concept of "social type" is lacking to his discussion of *Nationalism and the Future of Civilization*. Any theory which envisages a state where, in deference to some concept of democracy, of toleration, or of brotherly love, the American people for instance or the Australian or the British or the German will submit to inundation by an Asiatic immigration, is wholly out of touch with the real. Of the four or five types of internationalism that are going the rounds in the western world (the Catholic, the capitalistic, the Marxian, the Jewish, the anodyne Christian-moralistic of the eighteenth century), Professor Laski's internationalism is probably a blend, more or less coherent, of the last two. Certainly the *civitas maxima* of which he dreams is neither possible in any visible future nor desirable from the standpoint of anything that we know of human history or of the processes of historical movement.

Psychological concepts Professor Laski explicitly discards, yet they are essential to any understanding of the hold that the British gentleman has upon the British public for instance or of the relatively rapid rate of constitutional evolution in France or America. Professor Laski persists in regarding the world as governed and controlled by rational men sitting in a committee on the public welfare. It is the psychological school precisely that almost alone has successfully combated such utopian thinking, shown the real relations of sentiment and interests and given a fairly workable description of the historical process.

Absence of the concept of level of civilization from Professor Laski's method leads to the many absurdities that are assembled in his essay *Law and Justice in Soviet Russia*. To find parallels to the procedures of the Russian courts of which Professor Laski speaks as an eyewitness, one does not have to journey to the realms of the ideal, one has only to consider juridical situations on the early American frontier or in Colonial New England. There one can see actually functioning in judicial capacities the same baker's assistants that arouse Professor Laski's ecstatic admiration or one can even find horse-thieves—ex or actual—holding important positions in political parties. The analogue to the Comrade's Courts in Russia could be found in Boston or Hartford in the days of Cotton Mather when neighborly interest in a man's attitude towards infant baptism was just as keen as the Russian comrade's interest in the purity of his neighbor's Marxian dialectic.

I am surprised at the lack of critical reaction that has been so generally evident to Professor Laski's famous essay on *The Judicial Function*. Far from being too much neglected, as Professor Laski assumes, the theory that "the judge is an instrument of the State-power" is virtually the only theory that has had any currency on the Continent. The one thing to say about it is that, as Professor Laski's paper itself shows, pressure from the State is only one of the pressures that bear upon the judge. An analysis of almost any court decision will normally show a dozen or more such pressures. The problem of the political scientist would seem more soundly to be the discovery of the relation of those pressures and the relative importance of each as an indication of the character and sentimental potency of what Professor Laski calls the "community ethos." Basically Professor Laski's grudge against the procedures of the English courts or against the American court for such unfortunate incidents as the Sacco-Vanzetti case, goes back to a theory which he leaves implicit, and which any explicit analysis would at once correct, that "the function of the courts is to render justice." What justice is no one knows or has ever known. Any objective examination of history will show that the function of the courts is, has been and must always be, to put an end to quarrels between groups or individuals in the interests of a preservation of the given social equilibrium. That is the whole story, and the forces that determine juridical decisions are the forces that create and uphold the given social equilibrium.

Professor Laski's essay on *The English Constitution and French Public Opinion* illustrates the limits of his interests in history. What he really draws is the curve of French literary attitudes towards the British Constitution during the eighteenth century. Why the "patriots" in France failed to establish a constitutional monarchy in the face of the Revolution is a question on which much that is valuable has been written and on which Professor Laski has nothing to say. Indeed his whole elaborate research should have been guided not by the denial but by the perception that the influence of the British Constitution on constitutional forms on the Continent has been exceedingly great. That would have spared him much irrelevant lament that seems out of place in a Marxian to begin with.

Professor Laski is probably at his best in his essay on *The Committee System in English Local Government*. That essay may interest an antiquarian some day if the worshippers of Rapid Change succeed in any further weakening of aggressive loyalties to Anglo-American traditions in the face of the onslaught from the Continent.

Columbia University. ARTHUR LIVINGSTON.

The Law in Quest of Itself, by Lon L. Fuller. 1940. Chicago: The Foundation Press. Pp. vii, 148.—This little book comprises three lectures that were delivered by the author at the Law School of Northwestern University on the Julius Rosenthal Foundation, which was established some twenty years ago for the purpose of promoting legal research and the philosophical study of law. The problem discussed never fails to arouse the interest of law students that are prepared by more elementary and simpler textbooks to follow abstract arguments. What is law, what is its basis and sanctions, what is the relation between it and ethical ideas and sentiments? Mr. Fuller is an adherent of the school which accepts the concept of natural law, and a severe critic of "legal positivism." He dislikes metaphysics on the one hand, and verbalism and formalism on the other. He deplores the tendency to skepticism and the now fashionable repudiation of general principles in the name of a crude realism. He insists on the necessity and reasonableness of certain fundamental beliefs—such as are laid down, for example, in the Declaration of Independence. Democracy, to him, is not merely the substitution of the process of

counting ballots for that of breaking heads. He declines to divorce law from morality and common sense. He pleads for a genuine realism in the presentation and interpretation of the law as it grows and evolves.

The standpoint of the lectures is sound and enlightened, though Mr. Fuller is rather vague and a little too subtle for the average student. He makes too many references to jurists and scholars little known to the student body, and assumes more theoretical and historical knowledge generally than that body possesses. The thoughtful and educated lawyer will enjoy his little volume.

VICTOR S. YARROS.

The Second Duma, by Alfred Levin. 1940. New Haven: Yale University Press. Pp. viii, 414.—This book is described by the author as "a study of the social-democratic party and the Russian constitutional experiment." Russia's experiment with parliamentary and representative government will always interest the historian and the student of politics and evolutionary reform. Several additional volumes will have to be written if the whole story of the Russian experiment of 1905-1917 is to be adequately told. But the first Russian parliament — or duma — met and worked under chaotic conditions and was in effect an instrument of the revolution which followed the defeat of the Czarist Russia by Japan. It requires a different set of scales and weights than that properly applied to the second duma, which had a better chance of success. Why and how it failed; why the reactionaries in it and in the court circles found it possible to dissolve it, change by decree the suffrage system, in violation of the Fundamental Laws wrested from the bewildered autocrat in 1905, and why the masses did not revolt against the bold counter-revolutionary step of the ruling clique—all this is very lucidly and impartially set forth by Mr. Levin.

The czar never trusted the duma and never was sincere in his concessions to the forces of liberalism. He dissolved the second duma because he felt that the masses were weary, disillusioned and apathetic. But the extreme left at that critical time recklessly played into the hands of the irreconcilable extreme right. The duma was rendered incapable of useful, constructive work. The moderate elements in it could do little to prevent suicidal tactics and endless, futile oratory. The czar and his rabid partisans astutely exploited the blunders and weaknesses of the duma.

The whole dramatic story is told admirably and its moral is pointed out without heat or prejudice. That moral should be pondered and taken to heart by extremists in America, where the leftists and the rightists not infrequently make common cause against the enlightened and reasonable progressives and succeed in destroying the fruits of decades of patient and faithful work in behalf of the general welfare and sound reform.

V. S. Y.

Industrial Conflict: A Psychological Interpretation, edited by George W. Hartmann and Theodore Newcomb. 1939. New York: The Cordon Company. Pp. xi, 583.—This solid and important volume is the first yearbook of the Society for the Psychological Study of Social Issues, organized nearly four years ago and now operating as an affiliate of the American Psychological Association. Whether or not psychologists are prepared to make a substantial and valuable contribution to the reasonable and humane solution of our complex social-economic problems, is a question which admits of differences of opinion. But they might and should make a serious attempt to offer their guidance in that troubled realm, thus re-enforcing the efforts of other men of good will and practical good sense.

From this viewpoint the present yearbook is highly commendable, despite a frankly avowed bias—strong sympathy with union labor and the wage-workers generally. Some of the contributors—of whom there are twenty—are well-known radicals, and some express the conviction that the demands of the workers have been "extraordinarily modest," and that employers have fought these demands because "their understanding of the emotional needs of their workers was feeble." The old-fashioned liberals and the adherents of the classical school of economics would not accept this assertion. Some of the contributors believe in public ownership of the means of production and in a "cooperative commonwealth." Others are not interested in ultimate solutions, but in measures and policies designed to substitute arbitration and expert mediation for strikes, lock-outs, and violence.

It is generally agreed that the application of the democratic spirit, the scientific approach, and good will on all sides would reduce industrial warfare to a minimum.

Many of the studies in the yearbook are technical and illuminating, and the psychological interpretation of the data presented in the several sections of the volume is distinctly helpful.

It may not be impertinent to suggest that in the next yearbook contributions from the individualistic and moderately liberal schools might well be given adequate space. The general public, and particularly the employers and industrial managers of the country, are likely to think that the volume under notice is one-sided and excessively partisan. Such an impression would result in the neglect of the work by those elements, as well as by many members of the bar and bench, who play a leading part in the shaping and evolution of industrial relations.

V. S. Y.

The Bar of Other Days, by Joseph S. Auerbach. 1940. New York: Harper's. Pp. 364.

This rambling volume of recollections is not so much a history of the bar of other days as a personal memoir of certain of the more prominent metropolitan advocates during the past sixty years. It is Boswell sitting in a score of court rooms and making notes on what he regards as the great moments in the lives of a succession of Samuel Johnsons. Just when the author could have had time for his own cases is a question, for he seems to have sat in on most of the celebrated causes since the year 1879 when he took up a clerkship in the office of Man & Parsons and was put at the tiresome task of searching titles. As a pop-eyed law clerk he was an awed spectator at the trial of Guiteau for the assassination of President Garfield. It was something to have been there at all, and while this reviewer appreciates the 14 pages of transcript from the evidence he would have been glad to hear more about the color and drama of the occasion from an eyewitness.

The most notorious case at which the author was an onlooker was the crim. con. trial of *Tilton v. Beecher*. He had the good fortune to be in court while the eminent William M. Evarts was conducting the examination of Henry Ward Beecher, and Dr. Auerbach tells

how he "sat under the spell" of Evarts' closing argument, which, I may add, lasted eight entire days. To the author's mind Evarts in this case rose to "heights of advocacy" beyond which he never reached. To Evarts' son Sherman, however, the case "presents no important points of law that might be of interest to the profession or the student." The clearing of Beecher after a signed confession of his guilt caused some surprise among the laity at the time, though after listening to Evarts for eight consecutive days even Beecher himself must have believed in his own innocence.

In the case of *Laidlaw v. Sage* the author was Boswell to the brilliant and theatrical Mr. Choate who was making a Roman holiday of the opportunity to poke fun at the miserly Russell Sage. Threatened in his office by a bombthrower, the banker had been dastardly enough to seize one of his clerks and use the poor fellow as a buffer. The author reports Mr. Choate, in a damage suit brought by the injured clerk, as being in one of his "exuberant moods" during the trial of the case. He must have been positively Puckish, for he had to win his verdict against Sage three times before he could make it stand with the Court of Appeals.

Dr. Auerbach has given us some twenty-six sketches in all, varying in length from the 45 pages devoted to Joseph Choate to the 3 accorded to John G. Milburne and Martin W. Littleton. Evarts receives 32 pages and John K. Porter 28. De Lancey Nicoll is worth 13, though such a tyro as Elihu Root rates only 4, and Benjamin N. Cardozo is disposed of in 5.

In a foreword the author charges himself in advance with digression, and the charge is amply proven on every page. Some of these divagations are delightful and some are a bit on the verbose side. In the main the book is good reading, especially if one has some acquaintance with the New York bar just before and just after the turn of the century.

BELLAMY PARTRIDGE.

Bridgeport, Conn.

National Labor Relations Board Cases: United States Supreme Court Decisions, edited by Charles Aikin. 1939. New York: John Wiley, London: Chapman & Hall. Pp. viii, 120.—This book is a collection of abridgments of the eighteen Supreme Court opinions on the National Labor Relations Act rendered from April 12, 1937, to April 17, 1939, together with a copy of the Act and a short bibliography. Each opinion is prefaced by a short, well-written statement of facts and background, with occasional quotations from oral arguments. As a handbook, the book is valuable to the university student. As a book for lawyers, its usefulness is limited. Unfortunately for the book's currency, from the time of compilation to the end of the last term the Supreme Court has written at least seven more opinions on the Act, each of which is of major importance but is necessarily omitted. Although the book will undoubtedly help a lawyer who wants to acquire a general background for understanding current decisions or to refresh his recollections of the cases, most lawyers will prefer to read the unabridged opinions, even with those portions which someone else may consider unessential.

LEON M. DESPRES.

Independent Labor Organizations and the National Labor Relations Act, by Frank T. Bow. 1940. New York: Prentice-Hall. Pp. 120. *The Wagner Act*, by John H. Mariano. 1940. New York: Hastings House. Pp. 229.—These two additions to the rapidly growing list of books concerned with the National Labor Relations Act merit little attention from lawyers. They are innocuous, but not significant.

Bow's book is a guide for unaffiliated labor organizations. Seventy pages are devoted to detailed recommendations for the constitution of such an organization; fifty pages discuss the rights of unaffiliated organizations and give some suggestions regarding the way that they should conduct themselves toward their employers. The most important suggestions are: "Don't ask or accept from your employer assistance of any kind," and "don't discuss matters relating to the formation of the organization in any way with any foreman or other supervisory official."

This guide is intended for employees who want to organize unaffiliated labor organizations which will get by with the National Labor Relations Board. Probably it will be most useful to attorneys who are consulted in such a connection and who have had little experience in labor matters.

The Mariano book consists of four rather loosely connected essays dealing with labor unions and labor law. They deal principally with New York City cases and problems. The author's treatment is very rambling, and he raises numerous questions which he does not answer. He is pro-labor in his outlook and approves generally of the Wagner Act. At the same time he would accept amendments not very dissimilar from those approved by the committee of the American Bar Association.

EDWIN E. WITTE.

Gustav Stresemann, His Diaries, Letters, and Papers, edited and translated by Eric Sutton. Vol. III. 1940. New York: Macmillan. Pp. v, 636.—The last volume of Stresemann's papers contains again some important notes and letters which are not published elsewhere. Special interest belongs to Stresemann's notes on his conversations with Poincaré as he visited Paris to sign the Kellogg Pact, and on his talks with Parker Gilbert, the American Agent for Reparations.

Stresemann again is revealed as the German patriot who never wavered in his hope for a revision of the Versailles Treaty, who worked for the early evacuation of the Rhineland, the union with Austria, a fundamental change of the German-Polish frontier, and the reduction of reparations before the German economy would break down under the combined burden of reparations and short-term indebtedness. But he believed that Germany could secure such redresses by peaceful negotiations. French insistence on security at a time when Germany presented no menace to the French army, meant the doom for the "policy of understanding." Stresemann lived long enough to see the failure of the "spirit of Locarno." The mounting flood of group egotism and the growing disintegration of German parliamentarism were to a large extent the outcome of his none too successful foreign policy, and they combined to make his last years—being a convinced adherent of the parliamentary system—difficult.

Though being only an episode, the story of the years between the meeting of Thoiry with Briand and his death in 1929 is worth recalling at the hand of the papers of one of the most important participants and the impartial remarks of the editor.

RUDOLF FREYHAN.

MEMORIALS

DURING the Association year which ended last June 30th, some 449 members of the American Bar Association answered the summons of death. Among them were many who had been members for years and had worked tirelessly in the interests of the Association and in many worthy public causes. Their passing was reverently noted at the first session of the Assembly in Philadelphia, and their names will be engrossed upon its record, as soon to be published in the Annual Report Volume for that Association year.

In accordance with custom, memorials were presented as to the lives and services of several of the deceased members who had held high offices in the Association. At the current meeting, these were Mr. Earle W. Evans, of Kansas, former President of the Association; Mr. Walter S. Fenton, of Vermont, former member of the Board of Governors and member of the House of Delegates at the time of his death; Mr. John Hinkley, of Baltimore, former member of the Executive Committee of the Association and active in many of its projects; and Mr. George B. Young, of Vermont, former member of the Executive Committee of the Association and former President of the National Conference of Commissioners on Uniform State Laws.

Memorial to Former President Evans

The memorial to former President Earle W. Evans was appropriately presented by former President Guy A. Thompson, of St. Louis, Missouri, and was as follows:

IT is my sad duty, but nevertheless a labor of love, to bring to the formal notice of the American Bar Association the death of one of its former Presidents, Earle W. Evans of Wichita, Kansas. He died in New York City on July 30, 1940. As "darkness falls from the wings of night," so the news of his death has cast its gloom over the host of men and women who knew him from the Atlantic to the Pacific. Many know the shining chapter of his later life, but, doubtless, few are familiar with the picturesque, the romantic, the inspiring foreword of his youth.

He was born on a ranch near Wellington, Kansas, on February 20, 1873. There, during his youth, he attended the public schools and contributed to the support of his family by riding the range and serving as guide on horseback for visitors from the East who were interested in that Western country. Many times he drove cattle from the Indian Territory to the Canada border. Later, but while still a youth, with his widowed mother he moved to Wichita where he attended Garfield University. Here, in the afternoons after school, on Saturdays and during what other boys called vacations, he drove laundry and grocery wagons, clerked in a dry goods store and played semi-professional baseball. From his early youth, probably at the suggestion of his mother, he had cherished the hope that one day he might become a lawyer, and he mustered the courage to call on R. R. Vermilion, of Wichita, then one of the most distinguished lawyers of Kansas, and to disclose his ambition. He was advised by Mr. Vermilion to learn stenography so that he might make himself useful in a law office while he studied law. This he did and obtained employment in Mr. Vermilion's office as stenographer, janitor and general factotum. There at last he graduated *summa cum laude* from the school of hard knocks, and became a full-fledged lawyer on his twenty-first birthday.

Totally devoid of self-pity, this red-headed lad was forever effervescing with energy, ambition, confidence and optimism. The motto of his state, "Through difficulties to the Stars," was his motto. He believed in his star and he attained it.

The inspiration of his youth was his mother, a woman whose lack of pecuniary dowry was more than offset by literary talents which were occasionally reflected in magazines. In the case of both mother and son, their common struggle brought its reward, not merely in measurable comfort, but also in habits of helpful companionship which characterized every relation of Earle Evans' life. As he grew older, "distance lent enchantment" to that motherwise influence and the planned economy of a humble home.

He was a sturdy soul, never doubting what he believed, and he believed in himself, happily and hopefully, and he had faith, the kind of faith he spoke of in his annual address to this Association. "How little there is," he said, "of the real worthwhile in life for any of us without faith, even in times we deem good—faith in man and the institutions of man, faith in our country and in our God."

Leaving his native town as a boy, as I have said, and starting life anew without wealth or influence and among strangers in a strange city, dependent, yes, but depending on nothing but his ambition, his courage and his industry, he rapidly gained recognition in his profession, and within a few years became a partner in the leading law firm of central Kansas of which his adviser and friend, R. R. Vermilion, was a partner. Through that medium his acquaintance rapidly extended to Chicago and New York, and he quickly perceived its value. From that time until the day of his death, the old firm, of which he finally became the senior member, represented in his section many of the important interests of the country.

Holding that his country owed him nothing but that he owed it everything, he identified himself with every movement for the betterment of his generation and the alleviation of its suffering. In him the crippled children of the land have lost a friend. He devoted a large part of his life to their rehabilitation and happiness. Whether in bar associations or in local chamber of commerce, civic clubs and community chest, or in crusades for political and professional decency, he was both leader and laborer, master and servant.

From the day of his admission to the Bar, he loved his profession, was jealous of its honor, conscious of its responsibilities, and active in its service. His membership in the American Bar Association dates from 1911. Throughout the Association's long history few men have given to its manifold activities more unstintingly of their time and talents than did he. For seven years he was a member of the General Council (1925-1932), and for three of those years he was its Chairman (1929-1932). For nine years he was a member of the Executive Committee (1925-1932, 1933-

1935). He served on the Standing Committee on Professional Ethics and Grievances for seven years (1927-1933, 1938-1939). In 1926-1927 he was a member of the Special Committee on Supplements to the Canons of Professional Ethics, and later ex officio member of that Committee. He was Chairman of the Section on Mineral Law (1928-1929), and the following year a member of the Section Committee on Conservation of Mineral Resources (1930-1931). He was Chairman of the Special Committee on Legal History (1932-1933). And then in 1933 his work and worth were recognized and rewarded by his election to the presidency of this Association. As was expected, his administration was a notable one in extending the Association's frontiers of accomplishment.

His activities did not cease with the expiration of his term as President. Indeed, perhaps his greatest single service to the Association and to the profession at large was done after he had handed over his mantle as President to his successor. For years the Law List problem had plagued us. It had been a persistent subject of discussion and debate. Special committees had dealt with it and had from time to time held protracted hearings, only to remain baffled and defeated. In 1935 the attack was renewed, this time by a Special Committee on Law Lists, with Earle Evans as Chairman. He devoted two years of arduous labor to this problem and found its solution, which is set forth in the report he made on behalf of this Committee at our annual meeting in Kansas City in 1937. He continued as a member of this Committee until his death.

Now that he is gone, his friends will long remember his great shock of hair, still burnished with the red of his youth. They will long remember his handsome and cheerfully pugnacious countenance, daring the world to be friendly and hopeful. They will long remember his devotion to his multitude of friends and his keen interest in them. I think it can be said of him, as it can be said of few, that no one ever heard fall from his lips an unkind word about another. Verily, like Abou Ben Adhem, he was one who loved his fellowman.

But much as he liked to be liked, much as he must have relished praise and fame, I am sure that if our dead friend could speak, he would say that his finest eulogy, most to be cherished, lies remote from the public gaze and is written in the tears of his children and of a gracious woman mourning in the shadows of widowhood.

What an amazing, what an inspiring life was his! Where possible except in this great Democracy of America, which he loved with sacrificial devotion, even unto death. But it is also equally true that such a professional career was attainable only by a mind unconquerably resourceful, a heart perennially courageous, a soul true to every trust, and an abiding faith, as he said, "in man and the institutions of man, in our country and in our God." Useful citizen, exemplary lawyer, loyal friend, faithful and devoted son, husband and father, hail and farewell.

Fred H. Reed Photo

EARLE W. EVANS, 1873-1940

Memorial to Walter S. Fenton

The memorial to Mr. Walter S. Fenton was presented by former President William L. Ransom, of New York, who spoke as follows:

MR. PRESIDENT, Distinguished Guests, Members of the American Bar Association. By your leave I am to speak for a few moments in memory of a beloved friend of many of us—a lawyer who loved this Association, worked for it, and made it a part of his life, as few men have done. It is not easy to put into words the sense of loss which we feel afresh this morning, as his absence from this platform makes us realize anew that, in the words of Holy Writ, "He shall return no more to his house, neither shall his place know him any more."

But it isn't merely because we knew and loved this rugged and vibrant personality that his memory has a place in our exercises this morning. I believe it is because in our hearts and minds we would like to raise high and keep high always the standard of what he was and what he tried to do, in this Association and in his State, his community, and his country.

From year to year in these exercises we have honored the memory of great leaders of our profession—men who have been outstanding because of the conspicuous offices they held, the opinions they rendered in judicial office, the contributions they made to legal

doctrine, the well-known cases they tried, the National eminence they achieved in the law. This is all most fitting. But I suggest for your consideration that when we pause to pay tribute to Walter S. Fenton and what he was among us, we are giving our meed of recognition to what in a broader sense our profession and our Association are and should be. For this rugged son of Vermont was the kind of man whom many regard as exemplar of the American lawyer at his best —typical of what American lawyers can be and do in American communities throughout this land.

His life was lived in the State of his birth. His forbears were of virile New England stock. He studied law in a law office with the aid of two years in a law school. He learned wisdom and gained experience the hard way, in the old-fashioned "trial by jury" and "law-governed" courts, and he found great satisfaction in the general practice of his profession.

He was a trial lawyer of exceptional skill. He would have made his way, I am sure, at the Bar of any State or city in this land, but he loved the small city which was near his birthplace. For him the rewards of life were to be found in the quiet, unhurried streets, the boon companionship of family and friends, the confidence which character and conscience can command in such an American community.

He served his State, his city, in many honorable capacities but always he came back quickly to the counsel table. He could have had any office within the gift of his State, but he chose the independent opportunities of private practice, in which he rose by tireless work to lead the Bar of his State and head its largest law firm.

He was drafted for many high offices in the Bar of his State and his Association—as member of the old General Council, the old Executive Committee, the Board of Governors, many committees, the Council of the Section of Legal Education, and at the time of his death on July 12, 1940, Chairman of an important section—but he never sought a place for himself. He probably would have been elevated ere this to the highest office in this Association but failing health warned him against accepting so arduous a task; and we could not command him at such risk.

On the last afternoon of his life he worked on plans for this meeting, and I found his finished work on his desk when I went to his office. Evidently his last task in life was for us on the afternoon of his fifty-fourth birthday. And in the presence of the gifted delegate of the Canadian Bar Association who has honored us by coming back to our meeting this year, I may refer to one item that was open on that day. Realizing that the future of liberty and government under law on this Continent and in the world may depend upon the solidarity and cooperation of the peoples and the lawyers of Canada and the United States, Walter Fenton had been doing all that he could to bring about the attendance at this meeting also of the distinguished President of the Canadian Bar Association, our friend, Mr. McCarthy, of Toronto. This did not seem likely then, but I am glad to be able to say that within the past few days the hoped-for word has come, so that we shall have not only the distinguished and eloquent Mr. Brockington as representing the Bar of Canada with which we are so closely identified, but also the gifted trial lawyer who is now the President of the Canadian Bar Association.

Always Walter Fenton's excellent judgment, his deep affection, and his whole-souled loyalty were at the command of this Association and his friends in it. His place with us did not depend upon offices which he held. And yet, as we look back on his life, his work, and his character, we see that he won and he held better titles and greater honors than we could have voted from any which are named in our Constitution or our By-laws.

The rugged patriotism of his public principles, the frankness and the courage with which he held his convictions, the unbending integrity of his professional and public life, the friendliness and the good nature of his dealings with men, the moderation and good sense of his counsel, the purity and the quality of his private life as husband and father, his unshakable fidelity to his friends and to his word when given, and, above all, his deep love of country—truly we may say of him that

> "His life was gentle, and the elements
> So mix'd in him, that Nature might stand up
> And say to all the world, 'This was a man.'"

The loss of such a leader leaves a gap in our councils at a time when "shadows, clouds, and darkness" beset our path. His was the needed "courage of conscience," coupled with an abiding belief that the American system of justice under law should never be abandoned, compromised, or whittled away by soft and deceptive philosophies or phrases. He could see two sides of any question which did not concern the future of his country or the integrity and good repute of his profession. On those issues, it was never said of him, as the prophet of old cried out, "How long halt ye between two opinions?"

He scorned our critics and flamed against them, and he set his face like flint against ideas which he believed to be dangerous to the American ideals. To him, the American Bar Association was a great and vital bulwark of free institutions, worthy of the best that can be put into it by the best of our busy lawyers—never a plaything for amateurs, never an experiment station for the idle-minded or a springboard for personal ambition.

He freely gave of his leisure and his life-blood to help make and keep this Association what he believed to be a first line of defense for constitutional government.

I have never heard "America" sung as it was sung as the closing hymn of the great throng at his funeral when the clergyman announced its appropriate selection, because, he said, of Walter Fenton's "thought for the Nation and its unity and patriotism during his last days."

Here in this Association, as we come together for a few days in our annual meetings and our smaller sessions at midyear and then scatter to our offices and homes, I often feel, as I suppose many of you do, that we do not have time or take time to heed and to know fully the quality and the worth of the men and women who are enlisted in the work of this Association. We seem like

> "Ships that pass in the night and signal each other
> in passing;
> Only a signal shown and a distant voice in the
> darkness;
> So on the ocean of life, we pass and speak one
> another,
> Only a look and a voice, then darkness again and
> a silence."

We really strengthen the bonds of our friendship and our common effort when we take the time, as we do this

morning, to heed the passing of such a gallant friend from our midst. As the poet reminded us—

"Were a star quenched on high,
For ages would its light
Still traveling downward from the sky,
Shine on mortal sight.

"So when a great man dies,
For years beyond our ken
The light he leaves behind him
Falls upon the paths of men."

This Association is but the lengthened shadow, to adapt a familiar phrase, not of one man, but of many men who have lived and worked and struggled for its advancement. So we are grateful, and shall ever keep in mind the life, the character, and the work of Walter S. Fenton.

An account of the memorials presented by Judge William M. Hargest, of Pennsylvania, in commemoration of Mr. John Hinkley and Mr. George B. Young, will appear in the November issue of the JOURNAL.

LEGAL ETHICS

Sale of Opium Involves Moral Turpitude

On information in a disbarment proceeding filed by the Bar Committee of the Missouri State Bar, an attorney was charged with conduct involving moral turpitude. It appeared that the attorney had been convicted in the United States District Court of selling morphine hydrochloride, a derivative of opium. The Supreme Court of Missouri, holding disbarment required, said:

> We have approved the definition of moral turpitude as follows: "Moral turpitude is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man"; everything "done contrary to justice, honesty, modesty, and good morals." *In re Wallace*, 323 Mo. 203, 19 S. W. (2d) 625.
>
> Clearly, the act of feeding opium to a fellowman involves moral turpitude. It is idle to otherwise contend. Indeed, the failure of McNeese to even brief the case in this court may be taken as an abandonment of the contention. The report of the commissioner and his recommendation of disbarment must be sustained. *In re McNeese*, 142 S. W. (2d) 33.

Repayment of Funds No Bar to Disbarment

An attorney admitted taking and converting to his own use money belonging to his client, his only explanation for so doing being that his mother, who was dependent on him, had sustained an injury which required that she be taken to a hospital for medical attention and that he had been unable to repay this money.

In an opinion ordering disbarment, the Supreme Court of Washington said:

> The rule relative to the conduct to be observed by an attorney concerning the property of a client which comes into his possession is stated in the canons of professional ethics of the American Bar Association as follows:
>
> "The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> "Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him." 62 A. B. A. Rep. (1937) 1109. *In re Proceedings for the Disbarment of C. J. Smith*, Wash., 101 P. (2d) 311, 312.
>
> An attorney who uses funds of a client for his own benefit is not excused even though he may repay or agree to repay such funds before disbarment proceedings against him are concluded.
>
> The chief consideration is not of a client who has already been offended, but, rather, that the exhibition of that wrong discovers the character of the attorney and his unfitness to be trusted; and, while the payment of the money fraudulently used releases the attorney from civil liability, it is not a purgation of his offense, nor does it prove that he has become a fit person to remain on the rolls. *In re Grant*, 104 P. (2d) 602, 604.

Canon 27 Held Violated by Letter to Clients

The Professional Ethics Committee of the Baltimore Bar Association held a letter sent out by a law firm to six hundred persons who were clients or friends of the office violative of Canon 27 of the American Bar Association's Canons of Professional Ethics. The letter was as follows:

> Income Tax
>
> "We recommend the keeping of accurate and detailed accounts throughout the year to facilitate the preparation of State and Federal income tax returns. Inaccurate or incomplete accounts may result in overpayment or underpayment of the tax and underpayment will create liability for penalties and interest in addition to the tax. Both Federal and State authorities conduct careful examinations of tax returns and incomplete returns are frequently detected in one of the following ways:
>
> 1. Comparison of returns for consecutive years.
> 2. Comparison of the State with Federal returns.
> 3. Checking the dividend payment lists of corporations on stocks and interest payments on bonds with the income of this nature reported by the taxpayer.
> 4. Checking employer's reports as to wages, salaries and bonuses paid.
> 5. Actual inspection and audit of the taxpayer's books.
> 6. Information given by informers."

Canon 27 forbids all solicitation of business by circulars or communications not warranted by personal relations.

The law firm attempted to justify sending the letter on the theory that a lawyer's obligation to his clients extends beyond the mere performance of requested services.

But notwithstanding, the purpose of the letter was not, according to its senders, to bring business to the office, and although it was claimed that no business had come as a result of the circularization, the ethics committee of the Baltimore Association announced that the firm had violated Canon 27 of the Canons of Ethics.

The committee found that whatever the expressed motive of the senders, the principal effect of the letter would be the solicitation of business. Furthermore, occasional clients not served on a regular retainer basis are not those with whom a lawyer can be regarded as having such a "personal relationship" as contemplated in the canon.

By Committee on Professional Ethics and Grievances,
Hon. Herschel W. Arant, Chairman.

RECENT LEGAL PERIODICALS

By Kenneth C. Sears
Professor, University of Chicago Law School

CONSTITUTIONAL LAW

The Constitution and a "Planned Economy," by Henry Rottschaefer, in 38 Mich. L. Rev. 1133. (June, 1940.)

The planned economy here discussed involves (1) the control of production, (2) the regulation of competitive practices and labor conditions, (3) the regulation of investments, and (4) the regulation of the distribution of wealth. To what extent do recent constitutional decisions render possible such a planned economy? Federal action to subsidize production control "would now be sustained in probably every instance." The majority decision in *U. S. v. Butler* may be regarded as repudiated. Furthermore, effective control by a compulsory system was secured by the important decision in *Mulford v. Smith* which upheld the principle of limiting interstate trade to a federally determined national marketing quota. Then it is "conceivable that fixing intrastate marketing quotas may reasonably be held by Congress to be necessary or appropriate for achieving the purposes for which interstate marketing quotas are being established." Nor is it likely that the due process clause would prevent the conditional, or perhaps even the unconditional, denial of a marketing quota to an applicant. The Schechter and Carter Coal Company cases must be deemed overruled "so far as they held invalid the application to the businesses therein involved of the code provisions fixing maximum hours and minimum wages." It is practically certain that the Fair Labor Standards Act is valid in practically all situations within the law and that the national government can require those desiring to do interstate business in corporate form to procure federal charters. The powers to fix wages and prices, to tax, to spend, and the monetary powers give wide scope to the national government to redistribute wealth and income. The solace for the conservative is that this period of curtailed private economic liberty has been marked by a vigorous judicial protection of personal liberty in the field of other civil and political rights.

INTERNATIONAL LAW

The Present Status of Neutrality, by Quincy Wright, in 34 The American Journal of International Law 391. (July, 1940.)

There was some thought during and after the World War that neutrality was a dead idea but it was revived. The law of neutrality flows "from a general principle, namely, that the circumstances under which war is initiated between two states is no concern of other members of the family of nations." This principle is being challenged by the idea that there is such a thing as an unjust war. Otherwise there is "an inherent inconsistency in an international law which recognizes the right of states to exist and at the same time grants an unlimited power in states to institute a state of war and an unlimited freedom in states to remain neutral." Therefore, Professor Wright concludes that international law must recognize: "(1) that states do not have an unlimited power to initiate a state of war; (2) that illegal resort to war violates a legal interest of all states; and (3) that every state is competent to invoke available procedures of international law to protect that interest." Instead of discouraging war, neutrality has tended to encourage aggression of the strong against the weak. The inconsistency of neutrality with an effective international law was obscured during the nineteenth century because of the dominance of *Pax Britannica*. An attempt was made to have the League of Nations succeed to the British imperial hegemony but the world fell into anarchy. Instead of another hegemony there is more hope in a federal organization of the world based on an international law whose premises are consistent with each other. A world which desires to prevent such occurrences as the present international strife will have little use for the concept of neutrality. Thank you, Professor Wright, for a timely, well-written and provocative article.

PUBLIC LAW

Legislative Restrictions on Foreign Enlistment and Travel, by David Riesman, Jr., in 40 Columbia L. Rev. 793. (May, 1940.)

Heavily documented, this discussion is interesting because it deals with two phases of our turbulent days. While the treatment is historical much of the discussion concerns events within the knowledge of the present generation. Restrictions on enlistment have increased with the years due to the growth of international law in that direction and also to the passage of domestic legislation. The author is hostile "to any restrictions on truly voluntary foreign enlistment, although restrictions on organized recruiting and departure may be necessary to preserve domestic peace." The passport is relatively recent and liberal ideas in the nineteenth century concerning travel had resulted in limiting passport control to Russia, Turkey, and some Balkan and South American States. But the World War brought back strict travel restriction. Anticipation of the present war caused further curtailment of the freedom of movement. Restrictions on movement can be justified, if at all, only to preserve the desired neutrality. But the author is skeptical as to the value of travel restrictions in keeping us out of the present strife.

TAXATION

State Tax Barriers to Interstate Trade, by William B. Lockhart, in 53 Harvard L. Rev. 1253. (June, 1940.)

A three way division of the Supreme Court leaves the question of judicial relief from state trade barriers in an uncertain position. Justice Black and apparently Justices Frankfurter and Douglas would relieve against actual discrimination only. Justices Stone and Reed would prohibit potential discrimination, while Justice McReynolds and apparently Chief Justice Hughes and Justice Roberts would condemn all taxes "imposed directly" on interstate commerce even though no trade barrier is threatened. The new approach in the last two years under the leadership of Justice Stone is based on the theory that national commerce must pay its fair share of the local tax burden. So a state tax on gross receipts from interstate transportation, if properly apportioned, is not likely to be condemned. As to motor carriers, gasoline, mileage, ton-mileage and properly apportioned gross receipts taxes have been sustained and should not be condemned as unacceptable trade barriers. But it seems inconsistent with the idea that there must not be discrimination for the Court to have reacted favorably to state license fees measured by

capacity without regard to the mileage traveled within the state. High license taxes on the merchant-trucker are an effective barrier against a new method of distribution but in view of previous decisions concerning peddlers, judicial relief is possible but not promising, so long as all merchant-truckers are treated alike. The most effective trade barrier is margarine taxation. On this the Magnano ruling is neither hopeful nor hopeless and an attack under the Commerce Clause should be made upon this barrier.

TORTS

The Rationale Of Last Clear Chance, by Malcolm M. MacIntyre, in 53 Harvard L. Rev. 1225. (June, 1940.)

A professor of law in the University of Alberta has a good style and he presents a very readable discussion of a familiar subject. The discussion is based mainly upon English and Canadian decisions. The doctrine of contributory negligence is undesirable and the last clear chance doctrine is only a disguised escape from it. What is needed is a frank acceptance of the principle of comparative fault. "Every vestige of last clear chance must be swept away in favor of apportionment." Unfortunately, apportionment statutes have been ham-strung by having the last clear chance doctrine imposed upon them. "When we create a liability or disability because of the existence of negligence on the part of the defendant or the plaintiff, we do so because we wish to discourage the conduct which has created the risk of the harm. Consistency with our underlying ethical motivation should therefore make us strive to allocate the loss in contributory negligence cases in proportion to the degree of the fault of each of the negligent actors."

TRANSPORTATION

National Defense And Our Transportation Policy, by Harold D. Koontz, in 26 Public Utilities Fortnightly 67. (July, 1940.)

Nearly everything seems to have been wrong with the economics of the transportation industry since 1930. Pipe lines are the only carrier that is prosperous. Nearly sixty-five per cent of the total revenue ton miles of freight traffic is carried by rail and more than thirty-one per cent of the railroad mileage is operated by companies in the hands of trustees or receivers. There is reasonable doubt whether the railroads could meet the demands for the defense of the country. After listing many causes which have contributed to this condition, the author advocates a new national transportation act which should contain the following provisions: (1) extend regulation over all water carriers and place those engaged in interstate commerce under the Interstate Commerce Commission; (2) extend control over contract and private motor carriers in order to coordinate them with other means of transportation; (3) allow the commission to control motor carriers operating in intrastate commerce in order to remove hindrances to interstate commerce; (4) commission control over outside investments of carriers, labor matters, including compulsory arbitration, and remove the inequalities of taxation where it burdens interstate commerce; and (5) monopoly should be encouraged by pools, traffic agreements, and consolidations. There are other suggestions such as relief from excessive charges for grade-crossing eliminations and from the present system of reduced rates for government traffic on land grant railroads.

Commissioners on Uniform State Laws Meet for Fiftieth National Conference

The National Conference of Commissioners on Uniform State Laws held its fiftieth meeting at the Bellevue-Stratford Hotel in Philadelphia the week prior to the ABA annual meeting. Following addresses of welcome by Hon. William M. Hargest, President Judge of the Court of Common Pleas of Dauphin County, Pennsylvania, and President of the Pennsylvania Bar Association, and by Joseph P. Gaffney, Chancellor, on behalf of the Philadelphia Bar Association, the President's Address was delivered by Hon. William A. Schnader, well known member of the Philadelphia Bar.

President Schnader stated among other things:

History of the Conference

"As already stated, New York led the way in bringing about a Conference of official representatives of the States, the District of Columbia, and the Territories and possessions, looking towards uniformity of statutory law in the fields not delegated to Congress.

"We have been unable to ascertain whether the American Bar Association resolution of 1889 furnished the inspiration for the New York Act of 1890; but undoubtedly the American Bar Association's enthusiastic and emphatic endorsement of New York's action, gave great impetus to the growth of the Conference.

Parenthetically, attention should be called to the report of the 1891 meeting of the American Bar Association, of its Committee on Uniform Laws. The report was written by Lyman D. Brewster of Connecticut, who subsequently became a Commissioner, and served as President of the Conference from 1896 to 1901.

In this report, various reasons for seeking uniformity in certain fields of State law were clearly pointed out, and objections to an effort to attain uniformity by voluntary State action were answered."

At this session there were also reports of the treasurer, the secretary, and the executive committee, as were numerous reports of standing committees, general committees, special committees, and sections.

The various sections and committees of the conference held individual meetings to consider their work and the tentative drafts of acts which were presented to the conference in its general sessions.

The close relationship between the Commissioners on Uniform State Laws and the American Bar Association is well known. It is indicated by the quotation from Mr. Schnader's address given above. Many members of the ABA took advantage of the opportunity (as they have done in the past) to attend both the meetings of the Commissioners and of the Association.

Harvard Begins Experiment with Seven-Year Law Course

[*From Legal Intelligencer, Philadelphia, Sept.* 20, 1940]

Boston, September 19 (CCNS)—An experiment aimed at producing better lawyers will begin next week when 25 Harvard freshmen embark upon a seven-year course in legal education.

The experiment, by which it is hoped to bridge the gap between law schools and undergraduate schools, may have "profound effect upon the general trend of legal education in the years to come," in the opinion of James M. Landis, dean of the law school.

"The increased complexity of our social and economic order has expanded private law and enlarged greatly the field of public law," Dean Landis observed in discussing the new arrangement. "Modern industrial society calls for Government to exert a greater influence in the ordering of affairs. These changes demand the mastering of new techniques and new disciplines by any student who chooses to pursue the law as a calling rather than as a trade."

Plan of Study

Instead of the usual pattern of four years of college and three years of law school, Harvard's seven-year plan calls for three years of study at ordinary college courses, two years at straight law, and two years of law combined with specialized study of government and economics.

The plan has two major features. First, of the 16 courses studied in the first three years, 9 are prescribed, insuring the student a broad knowledge of history, social science, English literature, a foreign language, and a natural science. Second, a specialized study of government and economics is reserved until two years of law have been mastered.

Combines Resources

"The problem calls for rearrangement of the existing relationship between the professional schools and the colleges," Dean Landis explained. "Little will be accomplished if each of these institutions continues to remain isolated in its concern with the problem.

"The first step that must be taken is to view it as a problem of the university as a whole. The entire seven years must be viewed as a true continuum, seamless in direction and objective, designed as a whole to produce young men ready and capable to begin the pursuit of law. . . .

Pre-law Work Deficient

"It's not a deficiency in the actual teaching of the law, but in what happens to the student before he enters the law school. We can't do much more about perfecting the legal curriculum. But many students enter law school ignorant of the history of the world's thought and unable to express themselves in the English language. I'd say that 70 percent of the flunks in law school can be traced to the inability of students to express themselves.

"A tendency has developed in college curricula to require students in their third and fourth years to concentrate in some defined and special field. The advantages of such concentration are obvious, namely that it allows students to dig deeply in one department of knowledge.

Disadvantages of Plan

"But two difficulties attend such concentration. The first is that it tends to sacrifice acquaintance with other fields of knowledge, and the second is that concentration is demanded of men too young to have been purposely oriented or sufficiently trained.

"We are saving the advanced study of government and economics until the end because they are complicated subjects that require mature minds. It is unwise to throw a green college student into such complex problems. Undergraduates are not equipped to do much original thinking in these subjects, but more or less follow the pattern of professors. These are subjects that certainly do require original thinking."

Good Pre-legal Course

Asked to outline a good course of pre-legal education, the successor to the chair of Roscoe Pound responded:

"I stress the importance of acquiring an ability to use the English language. Many students are unable to think accurately because they cannot express themselves accurately. I have always thought that in giving up classical education we have sacrificed something in the way of discipline that made for precision in the choice of words and resultant precision in the choice of ideas.

"English literature and philosophy have an equal claim to history in inculcating in the student a knowledge of the history of our civilization, which includes an acquaintance with the thought and ideas of the past as well as of the events.

"I recommend mathematics to give the student a facility to deal with abstract ideas; a natural science to give him some concept of the scientific method, and a study of the social sciences to contrast their method with that of the natural sciences.

"I finally urge two things. Training in original sources so that by the time the student reaches the law school he will have lost some reverence for the printed page. The other is that the student avoid courses in so-called 'law.' He will have plenty of time to immerse himself in that subject when he reaches the professional school."

Work of Junior Bar Conference

Further attention in greater detail will be given to the Junior Bar Conference (held prior to the ABA meeting in Philadelphia) in the November issue. Meantime the following account of the Conference, clipped from The New York Law Journal of September 4th, will be read with interest.

Young American lawyers will have the opportunity to take an increasingly active part in the work of the organized Bar in strengthening national defenses if the recommendations outlined in the annual report of the chairman of the Junior Bar Conference, Paul F. Hannah, Washington, are approved by the Conference when it meets at Philadelphia, September 8 to 15, during the sixty-third annual meeting of the American Bar Association. The Conference is composed of members of the Association under the age of thirty-five years.

In a brief review of the work of the Conference committees during the past year, looking toward achievement of more direct participation by young lawyers in the strengthening of national defenses, Chairman Hannah emphasizes the widespread influence of the public information program, carried out with the co-operation of hundreds of members of the Conference, under the national direction of L. Stanley Ford, Hackensack, N. J. Although complete details are not available, 299 radio programs reaching an audience estimated at 7,638,000 and 897 platform addresses to audiences of approximately 54,359 are reported as the result of this activity.

In the field of strengthening the administration of justice, the report outlines the progress made under the direction of Paul B. DeWitt and the University of Michigan Law School in surveys dealing with nation-wide adoption of the recommendations for procedural improvement made by the Section of Judicial Administration of the American Bar Association, and the publication of the results of a number of the

surveys in various Bar journals and law reviews.

Along this same line is the work of the Committee in Aid of the Small Litigant, of which Ronald J. Foulis, St. Louis, is chairman. This committee has been assembling information as to practice and procedure in the inferior court systems such as justices of the peace and municipal courts characterized by Chairman Hannah as "the weakest segment in the judicial armor of democracy."

The Committee on Bill of Rights, under the leadership of Ralph E. Langdell, Manchester, N. H., is reported as having made substantial progress in its compilation of pamphlets for each of the states dealing with the history and court treatment of the protection afforded the rights of citizens under the constitutions and statutes of the various states. It is hoped to complete this work within the coming year, so that this material may be published and distributed to the public generally.

Despite the fact that this was an off-legislative year, the Committee on Legislative Drafting, headed by Charles E. Caspari, Jr. St. Louis, is reported as having continued its effort to have established in the various states legislative reference and drafting bureaus, with volunteer agencies of this character having been set up in a number of states where no such statutes are now in effect.

Continued co-operation with law schools and law students is reflected in the report of Frank F. Eckdall, Emporia, Kan., chairman of the Committee on Relations with Law Students. This committee's activities included ceremonies honoring newly admitted lawyers, sponsorship of law students by alumni groups and co-operation in the presentation of legal institutes and practice courses.

Other committees of the Conference showed progress during the year, with increased interest and activity reported for the States of Texas, Arizona, West Virginia, South Carolina, Kentucky, Nebraska, Iowa, New York, Rhode Island, South Dakota, Oregon and Washington.

To give greater effectiveness to the work of the Conference in carrying forward its program of assisting in the efforts of the organized Bar to meet the problems of national defense and security, Chairman Hannah recommends the establishment of a permanent Conference staff to give continuity to Conference work, development of active state units, particularly if the proposed amendment to the American Bar Association by-laws permitting joint memberships between local, state and the national bar associations is adopted at Philadelphia, and solicitation of financial support for Conference work from interested foundations and other institutions from which such assistance may be derived.

New York County Lawyers Association

THE JOURNAL acknowledges with thanks the receipt of the 1940 Year Book of the New York County Lawyers' Association, an attractively bound book of 260 pages. As the major Bar Association of New York City, it is interesting to note some of the statistics given. It was incorporated in 1908, its first President being Judge John F. Dillon. Later Presidents have included Alton B. Parker, Joseph H. Choate, Charles E. Hughes and Henry W. Taft. The Treasurer's report shows that the Association has net assets (including investments, library, land, equipment, etc.) of $869,638.22. Annual dues of active members, with practice of 10

(Continued on page 817)

To Members of the American Bar Association:

While it is not possible for every member of the Association to engage actively in Bar Association work, every member can aid in furthering the activities of the Association by obtaining the application of at least one new member each year. A form for this purpose is printed below.

The Association's fiscal year is July 1 to June 30. Annual dues are $8.00 for lawyers who have passed the fifth anniversary of original admission to the bar, $4.00 for those admitted less than five years. Dues accompanying applications are computed on a pro rata quarterly basis for the fiscal year, and three-fourths of a year's dues should accompany applications presented between October 1 and December 30.

Application for Membership
AMERICAN BAR ASSOCIATION
1140 North Dearborn Street
Chicago, Illinois

Date and place of birth.....
Original admission to practice..... State Year
Other states in which admitted to practice (if any).....
Bar Associations to which applicant belongs.....
.....
White ☐ Indian ☐ Mongolian ☐ Negro ☐
Name .....
Office Address ..... Street City State
Home Address ..... Street City State
Endorsed by ..... Address .....
Check to the order of American Bar Association for $..... is attached.

years' standing is $20.00; all others $12.50, except dues may be fixed at $7.50 for lawyers of less than 3 years standing.

There are 39 Standing Committees. Printed Reports of most of them are given.

Memorials

A large number of Memorials are given. Among them are those to:

Judge John F. O'Brien, late of the New York Court of Appeals, who served on that court with distinction from 1928 to 1939. He was a member of the American Bar Association since 1927.

Samuel Untermeyer, one of the leading lawyers of his time. Of him it is said—"As a leader of the Bar, patron of the Arts and of innumerable charities, champion of public causes and defender of the rights of men in all lands, Samuel Untermeyer won the profound respect and deep affections of peoples of all faiths and in every walk of life."

He practiced law in New York City for 60 years. For 30 years he was a member of the American Bar Association.

President's Report

The Report of the President, George Z. Medalie, is comprehensive and interesting. He says among other things:

"Our officers and directors, with whom in one way or another I have served for about a decade, are an earnest group of lawyers, who, notwithstanding differing viewpoints concerning certain fundamentals, have always submerged their own interests, desires and personal viewpoints in the interest of the Association and the Bar at large. Theirs always has been a genuine sense of responsibility, so that decisions made by them have been truly representative of the views of the bar as a whole, and its obligation to the community. The problems in which lawyers, as such, are interested do not involve mere legal questions concerned with rules of law and procedure, but they frequently have aspects that are social, economical and political in the broader sense. On such problems, directors who have expressed their own views in other forums have always been careful in the meetings of the Board to recognize the fact that they sit, not with a view to giving expression to their personal opinions as citizens or thinkers, but primarily as representative of a great group of lawyers, and that in the discharge of their responsibility to this group, they must speak for the bar as a whole."

Medical Education

THE ABA JOURNAL is in receipt from the JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION of an intriguing booklet. It is a large size pamphlet of 100 pages, entitled *Medical Education in United States and Canada*, being a reprint from the AMA Journal of August 31, 1940. Although lawyers' problems are not identical with those of medicine, in the field of professional education, there is much that interests us in what the medical profession has done and is doing.

The preface shows it to be the "Fortieth Annual Presentation of Educational Data by the Council." Under the subject MEDICAL SCHOOLS there is *first* given a statistical table giving the data concerning the 76 RECOGNIZED MEDICAL SCHOOLS IN THE UNITED STATES. [It would be interesting if we had similar authentic and up-to-date figures for Law Schools.] There is, *second*, a detailed discussion of further Education for Practicing Doctors, or what is called CONTINUATION STUDY FOR PRACTICING PHYSICIANS. [The methods and purposes here discussed are most interesting and suggestive in connection with the "Institutes" for practicing lawyers which are now attracting such favorable attention.]

Altogether the pamphlet is an inspiration in the field of what may be called "Local Self-Government" by the medical profession.